The American Institute of International Law:

Its Declaration of the Rights and Duties of Nations

By

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Le premier et le plus grand intérêt est toujours la justice. Tous veulent que les conditions soient égales pour tous, et la justice n'est que cette égalité. Le citoyen ne veut que les lois et que l'observation des lois. Chaque particulier dans le peuple sait bien que, s'il y a des exceptions, elles ne seront pas en sa faveur. Ainsi tous craignent les exceptions; et qui craint les exceptions aime la loi.

JEAN JACQUES ROUSSEAU.

THE AMERICAN INSTITUTE OF INTERNATIONAL LAW
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FOREWORD

The American Institute of International Law, which met at Washington in connection with and under the auspices of the Second Pan American Scientific Congress, adopted on January 6, 1916, a Declaration of the Rights and Duties of Nations. The Declaration differs from other projects of a like kind in that it is not based solely, or indeed at all, upon philosophic principles, but is based exclusively upon decisions of the Supreme Court of the United States. It is therefore fair to say that the principles of the Declaration are, as far as the United States is concerned, the law of the land, and an examination of the practice of the other American countries shows that these principles obtain in each of the American Republics, so that the Declaration is in reality a statement of the fundamental principles of international law, as they are understood in the New World.

At the tenth annual meeting of the American Society of International Law, held in Washington, D. C., on April 26, 1916, the Honorable Elihu Root, President of the Society, devoted his opening address to a consideration of the Declaration, its principles, and their importance.*

During the session of the American Institute, the undersigned, who happens to be its President, delivered a series of addresses dealing largely with the ideas contained in the preamble of the Declaration, without which it is incomplete. It has been thought advisable to print the series of addresses, just referred to, in connected form, as an introduction to the Declaration, and to follow it with the official commentary, which the Institute adopted at one and the same time with the text of the Declaration.

For the convenience of those who may be interested in the American Institute of International Law, its constitution and by-laws, its list of members and officers are placed in an appendix.

JAMES BROWN SCOTT.

Washington, D. C., June 3, 1916.

*Mr. Root's address is printed in the Proceedings of the American Society of International Law (1916), pp. 1–11; American Journal of International Law, vol. 10, pp. 211–221; Root's Addresses on International Subjects (1916), pp. 413–426.

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American Institute of International Law

Its Declaration of the Rights and Duties of Nations

Mr. Secretary of State, Mr. Ambassador, Mr. Root, Members of the American Institute of International Law:

His Excellency the Secretary of State of the United States, whom we are happy to count as a member, has welcomed the Institute on behalf of the Government of the United States. His Excellency the Chilean Ambassador, likewise a member, has welcomed it on behalf of the Second Pan American Scientific Congress, of which he is the worthy President; and Mr. Elihu Root, Honorary President of the Institute, and friend of all the Americas, has welcomed it on behalf of the publicists of North America, of whom he is the most distinguished representative. It becomes my very great pleasure, on behalf of the Institute, whose President I am for the time being, to thank you for the generous welcome which you have extended, to express our gratitude for the confidence which you have shown by your presence in our ability to carry out the purposes for which the Institute was created, and to voice our appreciation of your commendation, which encourages us to hope, if not to believe, that we may, in some slight measure, be worthy of the rôle which your generosity ascribes to us in the development of international law in the American continent.

It is also my very great pleasure, on behalf of the Institute, to welcome the charter members and the representatives of the twenty-one national societies who have been delegated to attend its opening session, and to express its grateful recognition of the interest which the national societies have shown by delegating such distinguished publicists to take part in its proceedings; and, on behalf of the Institute, I congratulate you upon the enthusiasm which has led you to come such great distances to take part in the proceedings of a scientific body, which has yet, if I may use a knightly expression, to win its spurs. It is especially gratifying to us that you have responded so generously and so promptly, and, in behalf of the

founders and of the officers of the Institute, I congratulate you and I thank you.

Why should the Secretary of State of the United States, the Chilean Ambassador and President of the Congress, and the most distinguished of North American statesmen welcome the Institute and take part in its formal opening, and why should representatives of the national societies of international law of every American country come to Washington from the most distant portions of the continent in order to spend a day, as it were, in conference with publicists of the twenty-one American republics? What is the nature of this Institute which has been formally opened in their presence? What are its aims and purposes, that busy men should concern themselves with it? What is the field of its activities and what services can it be expected to render which would justify the presence of so many and of such eminent publicists?

The Formation and Object of the American Institute of International Law

In simplest terms, the American Institute of International Law was intended to, and will, it is to be hoped, give visible form and shape to the one great interest which the American republics have in common, namely, the interest that the principles of justice, common alike to all and which determine the rights and duties of the men and women of each of the American republics, may become the standard of right and of wrong between and among the American republics, and that while measuring their rights they shall likewise prescribe their duties one with another. The American Institute of International Law is a frank and unqualified recognition of the fact that there is neither great nor small, rich nor poor, in the eyes of justice; that all are equal, that all have equal duties, that all have equal rights, and that the duties and the rights are the same for all; that what is right for one can not be wrong for another, and that what is inherently wrong can not possibly be right, even although the republic involved be the most numer-

ously peopled and the greatest in physical power. It proclaims the equality in law and before law of all the American republics. It insists that each has a like interest in the triumph of right and in the repression of wrong. It asserts in the language of Chief Justice Marshall, that "no nation can make a rule for others" and that "none can make a law of nations," from which it necessarily follows that the law to regulate the conduct of the Americas must be made by the Americas; that the law of nations must be made, not by any one nation, but by all nations. It is in the belief that the intellectual is preëminently the one field in which the American peoples can coöperate without fear and without hesitation; it is with the example of the services which the Institute of International Law has rendered to the cause of international justice, and it is also with the hope that American publicists can render a not unlike service to the American republics, if not to the society of nations as a whole, that the American Institute of International Law was formed and composed of representatives of the national societies of international law created in each of the twenty-one American republics.

It has been formally opened in the presence of representatives of every society of international law of every American republic, in the presence of the Secretary of State of the United States, of the President of the Congress, and of the distinguished North American statesman, because American publicists feel the need of a central and a directing force to be their agent and subject to their control, and because they further feel that the Institute, which is their agent, can perform these services; that the Institute and the societies of international law affiliated with it and working together and in harmony can both develop and popularize that system of international law without which, and without whose observance, anarchy rears its ugly head and tramples under foot the civilization, which alone is thinkable, and which can thrive only in an atmosphere of confidence and under the protection of just laws.

The American Institute of International Law begins its

career today and it is for its members to say whether it will justify its creation, or rather, it is for its members to make it worthy of its self-imposed mission, to develop and to make known the principles of international law, based upon justice, which must control the actions of the American republics in their relations one with another, if justice is to prevail in the western world.

The plan to form the Institute was the plan of two citizens of the two republics farthest apart, for one came from the most southern republic of South America and the other from the most northern republic of North America. The two enthusiasts, for they must needs have been enthusiasts to believe that, though dwelling so far apart they might nevertheless come together in the realm of ideals, met in the city of Washington in the month of May, 1911, to discuss questions of a like interest to the American republics, just as we meet today, again in the city of Washington, to discuss these same questions, and to devise means for realizing the ideals in practice which are before our eyes and in our hearts. They came to the conclusion that, in order to have justice leaven the American continent, a society of international law should be formed by the publicists of each republic, that there should be formed an American Institute of International Law in which each national society should be represented by an equal number of members, and that the Institute, coöperating with each of the societies, should give direction to their efforts and acceptable form to their deliberations.

They were, however, unwilling to surrender their judgment to what might be called their enthusiasm, and they addressed themselves to Mr. Root—happily with us today, and testifying his confidence in the Institute for which he also is responsible—saying, in a letter written on the 3d day of June, 1911, "after reflection and very much discussion of the advantages and the difficulties of such an undertaking, we, however, reached the conclusion that the best way to draw the leaders of thought together would be to create an Ameri-

can Institute of International Law, in which the publicists of each country should be represented, say, by five members; that the publicists of each American country should organize in their capital a local society of international law; that the American Institute should hold periodical meetings, the first of which should be held in Washington, for the scientific discussion of questions of international law, especially those relating to peace, so that little by little a code of international law might be drafted which would represent the enlightened thought of the American publicists and be the result of their sympathetic coöperation." To this appeal, Mr. Root, as an American in whose conception of America there is neither North nor South, could not and did not turn a deaf ear. He approved the project and placed himself unreservedly at their disposition.

Although greatly encouraged by the outspoken approval of Mr. Root, the enthusiasts—because people are enthusiasts or are considered as such until they have realized their ideals—were nevertheless unwilling to ask the coöperation of their fellow-publicists of the American republics until they had satisfied themselves beyond peradventure that the project, if realized, would justify the efforts necessary to call it into being. They felt that European publicists could be counted upon to approach the question in a spirit of detachment, if not in a critical spirit, and that the judgment of the members of the Institute of International Law would be peculiarly valuable because of the experience which they had had in the study of international problems and in the development of international law. The European publicists without exception approved the formation of the Institute, in the belief that, if formed, it might render genuine services to the cause of international law in the western world, and they thereby greatly strengthened the confidence of the two enthusiasts in the feasibility of their project and the advisability of its realization.

The proposers of the new Institute were thus assured of a widespread belief in its usefulness if it could be founded.

It was evident that its formation would depend upon the coöperation of the publicists of the different American states, and that it could only be created if leaders of thought in the different countries would confer one with another and agree to take the steps necessary to call into being the national societies upon which the Institute must rest. The proposers therefore addressed themselves to those publicists in the different American countries whom they happened to know and who, they believed—and the event justified their belief,—would enter into the project as if it were their own and procure its realization. They prepared a confidential note, which they sent to one publicist in each of the American states, explaining in brief terms the nature and purpose of the Institute and asking for an expression of opinion.

It would be unfair to say that the publicists consulted were in favor of the project; they were enthusiastic over it; and, encouraged by the approval of Mr. Root, of the European publicists and of representative publicists from each of the American republics, the founders of the Institute felt justified in taking the steps which were in their opinion necessary to secure its establishment. These steps were the creation in each of the American republics of a national society of international law, which, when created, should express a desire to be affiliated with the proposed American Institute of International Law, to be composed of five publicists from each of the national societies, elected by the charter members of the Institute upon the recommendation of the national societies. In this way, we were not imposing something from above, and we were not asking the publicists to coöperate with us in the formation of a body which should more or less resemble the other Institute. We were asking the publicists of the twenty-one American republics to consider themselves as one great family, to divide themselves for purposes of convenience into twenty-one different groups, and to have the Institute as the committee, so to speak, of the American publicists thus divided into twenty-one groups or twenty-one national societies.

It was evident that the publicists as a whole could not come together at any one time and at any one place without great difficulty and without great inconvenience; it was equally evident that the publicists of any one country would feel more disposed to devote themselves to the study of international law and to the dissemination of its rules if they were gathered together into a society of their own making and within their own country. But the proposers of the Institute recognized that the grouping of the publicists would fail of its purpose unless each group were considered as a part of a larger whole, for, although a society is national in respect to location and composed of members of one and the same country, it should nevertheless be and feel itself to be part of a larger body; and all questions of interest to and affecting the foreign relations of any one nation must be considered from the standpoint of all other nations, inasmuch as a right claimed by one can not be denied by another nation and a right admitted to belong to one is a duty of all to observe and indeed of all to protect. In international relations a right can not stand alone. It is accompanied by a duty so closely allied that right and duty are not considered as separate and distinct, but as two faces of one and the same thing, like the two faces of the coin which passes current.

The best if not the only way to create this international feeling, which an American educator has happily called the "international mind," is to suggest not merely that each society is a part of a larger whole, but that each society is incomplete in itself and that without association with the others it fails of its purpose. How is this sentiment to be created? Shall it radiate, as it were, from a common center, like the spokes of a wheel; or, on the contrary, shall these different national societies create a central organization which shall not be above them, because it is in a way their creation or depends upon their existence, and is to be regarded as their agent and the agency of the American publicists in giving a central direction, in coördinating the efforts of the societies

and generalizing, while harmonizing, their views? In other words, if the society is to be the national element, should not this central agency be the international element, at the same time in which it is the point of union and the clearing house, as it were, of the views of the national societies? How was this to be done? While recognizing the independence of each society, the principle of solidarity, which is an American doctrine, suggested, if it did not require, a federation of these national societies. A federation in the western world is only thinkable in terms of equality. To an American this seemed to be as natural as it was easy, and no institute of international law could be founded in this continent with hopes of success upon any other principle. Therefore, the founders of the Institute proposed that a national society should be formed in each of the American republics; that, although separate and distinct, each should recognize its dependence upon the other; that a central body or organization should be formed by the choice of an equal number of publicists from each of the American societies elected by the Institute, upon the recommendation of each of the national societies.

It is unnecessary to trace step by step the measures taken to create these national centers, and to unite them, though not to merge them, through their representatives, in a central organization. Suffice it to say that through the coöperation of the charter members in each of the American countries; through Mr. Root's approval of the plan and the confidence of the American publicists in the rectitude, disinterestedness and soundness of his judgment; through Mr. Bacon's visit to various South American countries, in which he advocated the formation of national societies of international law, to be affiliated with the Institute; through Mr. Lansing's intervention in his private capacity with his colleagues, the ministers of foreign affairs of the different American states, and through the coöperation of the governments of these states, in many instances, a national society was formed in every American republic, to be affiliated with the American Institute. Publicists

were chosen to represent the national societies in this opening session of the Institute, and members were recommended for election as representatives of the national societies in the Institute. Because of the interest evidenced by your presence, the American Institute of International Law has ceased to be a project, in becoming a fact.

Without further dwelling upon these matters, which are known to us all, let me quote one article of the Constitution, which, having met with the approval of the national societies, is the official statement of our aims and purposes. Article II of the Constitution is thus worded:

> The American Institute of International Law is an unofficial scientific association.
>
> It proposes:
>
> 1. To give precision to the general principles of international law as they now exist, or to formulate new ones, in conformity with the solidarity which unites the members of the society of civilized nations, in order to strengthen these bonds and, especially, the bonds between the American peoples;
>
> 2. To study questions of international law, particularly questions of an American character, and to endeavor to solve them, either in conformity with generally accepted principles, or by extending and developing them, or by creating new principles adapted to the special needs of the American Continent;
>
> 3. To discover a method of codifying the general or special principles of international law, and to elaborate projects of codification on matters which lend themselves thereto;
>
> 4. To aid in bringing about the triumph of the principles of justice and of humanity which should govern the relations between peoples, considered as nations, through more extensive instruction in international law, particularly in American universities, through lectures and addresses, as well as through publications and all other means;
>
> 5. To organize the study of international law along truly scientific and practical lines in a way that meets the

needs of modern life, and taking into account the problems of our hemisphere and American doctrines;

6. To contribute, within the limits of its competence and the means at its disposal, toward the maintenance of peace, or toward the observance of the laws of war and the mitigation of the evils thereof;

7. To increase the sentiment of fraternity among the Republics of the American Continent, so as to strengthen friendship and mutual confidence among the citizens of the countries of the New World.

International Law is a Branch of Jurisprudence and Should Be Studied and Developed as Such

It will be noted that the fifth object of the Institute, as stated in the Constitution, is "to organize the study of international law along truly scientific and practical lines in a way that meets the needs of modern life, and taking into account the problems of our hemisphere and American doctrines." I may be pardoned, in view of the importance of the subject, if I seem to digress in order to offer some observations upon the study of international law.

To study international law, we must needs form a clear conception of international law; otherwise its study would be of little, if any, value, and in any event it would be impossible to study it scientifically as the Institute requires. Now, if I am correct in the contention that international law is international right, that is to say, that it is justice, applied to and by nations, and if I am further correct in the contention that the fundamental principles of justice are common alike to national as well as to international law, we have a standard by which to measure international justice and we likewise have a method by which its principles may be imparted; because we are familiar with the fundamental principles of national justice and we have had a long experience in the scientific study and in imparting a knowledge of these principles.

We are justified in asserting that international law is law. If it were necessary to quote authority for this assertion we could point to the decision of the Supreme Court of the United

States in the case of the *Paquete Habana,* decided in January, 1900, in which Mr. Justice Gray, speaking for the court, said:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.

In order that the nature of international law and its status in the United States should be made clear, the learned justice enumerated as follows the sources of international law:

> For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.[1]

Armed with this decision, we do not need to debate whether international law is or should be law, or to discuss its sources; because, however fallible a court may be, it is to be presumed that the Supreme Court of the United States, composed as it is of nine thoughtful and experienced lawyers, sworn to administer the law of the land, are more likely to be right than a mere theorist who speaks on his own authority and on his own responsibility, or than a foreign office whose views are colored and indeed moulded by policy.

If, then, international law is law, or is to be considered as law, it follows that it is a branch of jurisprudence and that it should be taught as is law and as is jurisprudence. Now, an analysis of national law shows that it is made up of rules

[1] 175 United States Reports, 677, 700.

devised with more or less success to give effect to principles of justice; that these rules are statements of rights and of duties, although the statement of a right carries with it the duty of others to recognize and to observe the right, for the right of one is the duty of all to observe, and a duty of one involves a right also to the performance of this duty, for duty and right are correlative. But a statement of rights and of duties is one thing; their observance is quite another thing. They are not self-executing. There must be some means of enforcing a right, and of redressing a wrong which is a violation of this right.

If we take a specific example, the idea which I have in mind may become clearer. Let us consider, for example, the law of contracts, or, what is very frequently called in systems based upon Roman law, the law of obligations. Now, the law of contracts is made up of the statement of rights and duties, and the law thereof is so taught. What is a contract? Who may contract? What is an offer? What an acceptance? When is a particular offer accepted? When is there such a meeting of the minds as to result in a contract or an obligation? In the language of analytical jurisprudence, these and many other principles form substantive law. But it is a very practical world in which we live. It generally has a reason for what it does and it is averse to the study of things which have no apparent utility. The right is therefore considered useless if it can not be exercised; the duty meaningless if it can not be compelled. Therefore, alongside of rights there are remedies, or the rules of procedure to enforce rights and duties and to obtain redress for wrongs. In the language of analytical jurisprudence, these rules taken together form what is known as adjective law. But substantive law is one thing, and procedure quite another thing; and confusion results or is likely to result unless they be kept separate and distinct.

If international law is law and if it is made up of rules creating rights and imposing duties, it would seem that these rights and duties should be stated as they are in systems of

law, and that the procedure by which rights are maintained, duties enforced, and wrongs redressed should be considered separate and distinct from substantive rights, because they are separate and distinct. If international law is considered as law, and as a branch of jurisprudence, it should be taught as such; its substantive rules should be disengaged from the rules of procedure and expounded as in the case of a branch of national law; and the rules of procedure should likewise be separated as they are in national law and expounded as a system of procedure applicable to the law of nations. The result would be a classification of the substantive principles of international law, similar to although not necessarily identical with the classification of private law, because we are dealing with states, that is, artificial persons, and not with the natural persons of private law. When we come to the matter of procedure, we see that this part of the law is very defective and that agencies and remedies which are regarded, and rightly so, as essential in national law are either wholly lacking in international law, or are rudimentary in the sense that they are only coming into being. Such a classification would make the time-honored division of international law into the law of peace and war meaningless, because there is no law of peace and there is no law of war as such. They are rules which, taken together, define and state the rights and duties of nations. There are two methods of enforcing these rights and duties and of redressing wrongs. One is peaceful in the sense that it does not involve a resort to force disturbing the order of the community. The other differs in that it involves a resort to force which disturbs the ordinary life of the communities immediately affected, and, in a lesser degree, the world at large. This, although called war, is in essence self-redress by self-directed force. Now, in every nation making a pretense to civilization, self-redress has been tried and found wanting. Courts of justice have been created in which differences of a justiciable nature between man and man are decided, not by the litigants themselves, not by a resort to force,

but by disinterested persons called judges, who ascertain the principles of justice applicable to the case and decide by the impartial application of such principles. Self-redress, which has been banished from within civilized society, flourishes between states. It is a survival of what is justly considered barbarism within states, and it can not be other than barbarism between states. This method of separating international law into substantive law, on the one hand, and remedial law, on the other, has the great advantage of treating the remedies separate and distinct from the rights, and of showing that war, at best a remedy, must give way to that better remedy which, except as between states, has everywhere supplanted self-redress.

We know that the rule of national law does not always lie upon the surface or at hand; that in many cases we must seek for it as for hidden treasure, and that it is only found after much search and difficulty. We also know that when a principle of law is found it must be interpreted and applied to the concrete case, and we know that, in interpreting it and applying it to the concrete case, law is insensibly, but none the less certainly developed. We have had centuries of experience in the teaching of law, in the finding of law, in the interpretation of law, and in the development of law; and the knowledge, the skill, and the methods devised through these centuries of experience can be turned to the profit of nations if international law is law; because if it is or is considered as such, it naturally follows that the experience had in other branches of law can be availed of in the matter of ascertaining, interpreting, and developing international law.

Again, we know that the greatest possible agency in the development of a system of law is the court. We know that law is not studied in law schools merely for mental discipline; that the business of the world is regulated by law; that the rights and duties of men in their business relations are defined by law, and that honest differences of opinion, not to speak of disputes of a questionable origin and nature are car-

ried into court where the facts involved are found, where lawyers, intent upon the success of their client's cause, press a rule of law upon judges who, indifferent to the dispute and sworn to administer justice impartially, adjudge the case according to law.

We say that courts administer law, but that they do not make it; that it is the duty of the legislature to make or modify the law. This is no doubt true, and yet it is questionable if a court really can exist and administer justice without making law. We therefore speak of the law made by courts as judge-made law, and there is a widespread opinion that the law made by judges is better and more satisfactory than the law made by legislatures. In any event, in the English-speaking world, this is so, and the rules of the common law of England have, in the course of centuries, been moulded, developed and given the symmetry of a code by English judges. Is it too much to hope, to expect, indeed to believe, that the common law of nations can be moulded, developed and given the precision of a code by international judges sitting in international courts of justice?

International Law is or Should Be Made Synonymous with International Right

Before leaving this phase of the subject, I desire to call your attention to a matter which may be thought to be academic, but which I venture to think is well-nigh fundamental.

It will be observed that, in the leading European languages, the term meaning *right* is used to designate international law, whereas in English we use, in connection with international law, a term which may or may not be synonymous with *right,* but which is not necessarily synonymous with it. Thus, in French we speak indifferently of *droit des gens* or *droit international;* in Spanish, of *derecho de gentes* or *derecho internacional;* in Italian, of *diritto di gentes* or *diritto internazionale;* in German, of *Völkerrecht* or *Internationales Recht.* Likewise in English we speak indifferently of the *law*

of nations or of *international law,* but in so doing the word *law* is used in each case.

Now, the word *law* is ambiguous, and it is doubtful in English whether law means right or justice, or merely something imposed or commanded, whether right or wrong. This is not only a matter of form; it is one of substance. It is the distinction between *jus* and *lex,* expressing different conceptions by different words between that which is intrinsically right and that which is enacted by statute. The European phraseology means and can only mean that *right* is the basis, and that international law is but the formulation of the rules which express and which are designed to apply the conception of international right. If we bear this in mind, international *law* is international *right.* It is the right based upon justice, which varies but little with time and place, to which the measured and weighty phrase of Cicero is applicable:

> Neque erit alia lex Romae, alia Athenis, alia nunc, alia posthac; sed et *omnes gentes* et omni tempore *una lex* et sempiterna et immutabilis contenebit, unusque erit communis quasi magister et imperator omnium Deus.

If these views be correct, justice is much the same thing the world over. An examination of the principles of the law of each state shows that they are substantially the same, and this fact should lead us to believe that the principles of justice, common to all peoples within their national boundaries, may be accepted as the principles of justice to be applied between the states, made up of peoples sharing these fundamental conceptions. Our duty then is to adopt as a basis these principles of justice, which, taken together, make up international right, and to formulate the rules of conduct between and among nations which express and which are designed to apply the conception of international right. These rules may differ according to the skill with which the principles of justice are discovered and incorporated in them; but a common standard of international right is bound to produce a common rule which

will be an outward and visible expression of a universal and therefore international right. The purpose of the American Institute in studying the law of nations should be and doubtless will be to discover and to disclose the justice common to all, and to formulate the rules of conduct between states which express and which are designed to apply the conception of international justice.

Law in Peace Not Law of War Is the Chief Concern of the American Institute of International Law

Having explained the purposes which the founders of the American Institute had in proposing its establishment, having detailed the steps which were taken to call it into being in the different American republics, and, having stated the favorable opinions of the European publicists who were consulted and their views as to the services which the Institute could render, it would seem that the policy which we should pursue is clearly indicated, and that we only need to rear our structure upon the foundations already laid, in the consciousness that these very foundations must in large part determine the nature of the edifice which we hope will assume definite form and shape in your hands. We must bear in mind that our members, although not recruited from any one country, as is the case with national societies, are nevertheless recruited from one continent. The projects which we may devise will therefore be international, because they will be discussed and will be adopted by the representatives of twenty-one nations; but these twenty-one nations, although sovereign, independent and equal, are not scattered over the world. They are the twenty-one republics which, taken together, form the western hemisphere, and, in view of their origin and of the principles which they profess, they are aptly termed the New World.

Separated as we are from other continents by the Atlantic and Pacific Oceans, which in the past at least have been barriers, although in the future they may be found to connect the new world with the far east and the far west, it may well be

that the principles which we seek to establish will be continental without ceasing to be international; and that the projects which we adopt will make a special appeal to the nations of the western continent, because, try as we will, we can not wholly detach ourselves from our national interests and from our national conditions. As each republic is represented in the Institute by an equal number of publicists, recommended by the national society of each republic and representing that society, it follows that the views of the publicists of each country will be made known to the Institute, that they will be considered by its members in reaching conclusions, and that no project will be, can be, or should be adopted which is inconsistent with the conditions and traditions, the hopes or aspirations of the continent which is in years, but still more in its principles, in its point of view and in its ideals, a new world.

Now, without meaning to suggest that wars have not taken place and that they will not again break out in the western hemisphere, it is a fact that the republics of this continent are addicted to peace rather than to war, that peace is the rule, war the exception, and that when the resort is made to arms it generally happens that the war is civil, rather than international. The causes of the resort to arms, therefore, can ordinarily be ascribed to an imperfect internal organization in which the checks and balances so necessary in constitutional law and in national life have not been devised, or do not produce that order and equilibrium which in international life or which between states we would call peace. The problem with which we as American publicists are confronted is primarily to find or to hit upon a standard of conduct and a measure or test thereof which, recognizing the sovereignty, the independence, and the equality of every American state, will subject each and every one of them to this standard of conduct and by it test their actions.

It will not escape notice that the founders of the Institute have, in their various communications on the subject and in

their draft of a constitution, stated in no uncertain terms that peace is to have the lion's share of attention, and that the rules and regulations concerning warfare are not to be the chief object of their solicitude. They believe that peace is the outcome of justice and that in their opinion a *pax americana* can only flow from justice and its application between and among American peoples. Therefore, our preoccupation is to study the fundamental principles of justice; to endeavor to show that they are applicable between nations as well as between individuals; that they are translatable into terms of international law and that these principles of justice, not the rules and regulations of war, form the branch of jurisprudence which we call the law of nations. That these principles of justice, which in their application produce peace and which form what may be called the substantive law of nations, have been neglected by publicists for the study of the rules and regulations of war, which are at most a remedy to enforce rights and to redress wrongs, is evident to the casual observer, and has never been better put than it was some sixty years ago by the distinguished German publicist and statesman Robert von Mohl, who said:

> Just as international law has already developed the laws of war and of bloody compulsion to an infinitely greater extent than the laws of peaceful intercourse, even so has the science of politics directed its efforts to that part of international relations characterized by brute force and cunning. This is undeniably a heavy debt which science must make good.[1]

Justice Is the Bond of Men in and Between States

It is poor policy to lock the stable door after the horse has been stolen. It is indeed necessary to send for the doctor when the patient is sick, but today we lay great stress, and rightly, upon preventive medicine. We think of war as a disease in it-

[1] Encyklopädie der Staatswissenschaften (1859), p. 704.

self. It is not. It is the external symptom of an internal disorder of the body politic, and the proper thing to do is not merely to denounce war, to take measures to prevent its outbreak, and to regulate its conduct, but to probe beneath the surface to discover and to remove the evils which, if undiscovered or unremoved, will inevitably result in war. Now, no nation can be above the experience of mankind, and the experience of mankind in every country belonging to the society of nations is that justice between man and man is the essential condition of order, that the presence of justice prevents disorder, and that its administration maintains peace in the community. These ideas are commonplaces, for which no authority is needed. If, however, authority be desired, it is as ancient as Aristotle, who says in that oldest and yet newest of treatises on Politics, that "justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society." If justice is the bond of men in states, and we know from daily experience that it is, we may one day find by experience that justice is not merely the bond of men in states but the bond between states, or, to speak in terms of international law, that justice is the bond between nations. For, after all, states are made up of men and women held together by the bond of justice. As Sir William Jones, distinguished as scholar, jurist and poet, puts it:

> What constitutes a state?
> . . . . . .
> Men who their duties know,
> But know their rights, and knowing, dare maintain.
> . . . . . .
> And sovereign law, that state's collected will,
> O'er thrones and globes elate,
> Sits empress, crowning good, repressing ill.

This justice, however, must be administered and before this can be done it must needs be determined, for, as Aristotle says,

although his authority is not needed and I quote him merely to show that the ideas which I venture to express are as old as the hills, "justice is the principle of order in political society."

Now, let us reason together and let us see where an analysis of this simple sentence—for it is only a sentence—will bring us. An association of men and women within certain territorial limits, be they large or small, with articles of association regulating the conduct of each toward the other within territorial boundaries, creates a community, which is only another way of saying that the men and women thus associated and thus considered form a unit and that the community or unit is a political one. The principle of order in this political society is justice. If order be the result of justice, then the continuance of that order depends upon the continuous administration of justice. If justice be the bond of men in states, the continuous administration of justice is the continuous bond; if justice be the bond of men in states, it follows that justice is the bond of men in each and every state, because no distinction is made between state and state; if justice be the bond between men within each of these states, it follows, if the principles of justice be similar or identical, that justice will be common to the men and women of each state, consequently to the men and women of all states; if it be the principle of order in one state, it will be the principle of order in all states holding this common conception of justice, and its administration will maintain the principle of order which justice and its administration created.

If these statements be accepted, and they can not well be rejected, we find it necessary to agree upon certain things, in order that justice may be the bond and its administration maintain order between and among the states of the American continent. We must be clear in our minds as to what we mean by states. We must be clear in our minds as to what we mean by justice. We must be clear in our minds as to what we mean by its administration, and we must provide

some machinery for its ascertainment and for its administration between states, if justice is to be the bond in international society as it is in national societies. We must not deceive ourselves as to the far-reaching effect of these simple statements, which may perhaps be admitted in the abstract, but to whose consequences, applied in the concrete, many may object. A little thought and reflection will make this very clear and show how step by step we are led to the conclusion that states, like the men and women composing them, are subjected to the rules of law and the principles of justice common alike to men and states. If the principles of Aristotle be admitted, this conclusion seems inevitable, because, if justice is the bond of men in states, and if justice and its administration are the principle of order in political society, it follows as the night the day that, not only should the relations of men to men be determined by principles of justice, but that the relations of men to men, on the one hand, and to the state which they have formed on the other should also be regulated by the principles of justice. From this point of view, men formed political societies, and, practicing the precept of Aristotle, the statesmen of the American Revolution ordained justice, as set forth in the preamble to the Constitution of the United States, and also provided apt agencies for its administration.

The Conception of the American State Is Based upon the Declaration of Independence of the United States

We of America do not need to trouble ourselves about the original state, if there were an original state, or, indeed, how the different states of Europe came into existence. We take our stand upon a continent and that continent a new world, not indeed from the physical standpoint, which we could not maintain, but from the intellectual and political standpoint. We know how each of the American states came into being. We know that high-minded men assembled in each of the twenty-one republics of our western continent, represented officially today in the Pan American Scientific Congress and

unofficially, but none the less really, in the American Institute, in order to create a political society for themselves, separate and distinct from that of the European countries whereof they were the colonists, in the belief that they had the right, and by the exercise of it making it such, to form a state in each case; to determine the rules of law to regulate the rights and duties of the citizens or the inhabitants of each of the states thus formed, and to regulate the rights and duties of the government which in each case they created to promote order, happiness and well-being. When, again as the result of experience, the states which had thus been formed seemed to some of the people thereof to be too large, the larger were broken into smaller states.

It is not necessary for me to go into details or to recount the process by which this happened, as it is familiar in its great lines to all of us. Let me content myself, therefore, with a single instance, that of the United States, which happens to be the oldest and which has in some sense served as a model to all. For reasons which it is unnecessary to mention in this connection, the English colonists in North America decided to set up for themselves as the United States of America. They apparently had no doubt as to their right to do so; they had no doubt as to the position which their state was to assume among the then existing nations of the world; they had no doubt as to the nature of the state or of the political society, to use Aristotle's term, which they were creating; and as they stated their reasons in a document that he who runs may read, we are neither in doubt nor in the dark as to their aims and purposes. In the Declaration of Independence, proclaimed in Philadelphia on July 4, 1776, and which is stated to be the unanimous declaration of the thirteen United States of America, the members of the Congress apparently regarded it as the natural course of things for one section or group of people to separate itself from another. There was nothing mystic or hidden, divine or supernatural about it, because the separation which the founders of the Republic had in mind was to

happen in the course of human, not of divine events. They felt that the separation, while it might be delayed, was destined to take place because they contemplate it as "necessary for one people to dissolve the political bands which have connected them with another," and the consequences of this separation enabled them "to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them." Now, although this separation was to happen in the course of human events, and to result in a political society separate and distinct from that of the mother-country, the framers of this declaration, feeling that the event was important and that the bonds connecting them should not be lightly severed, recounted the reasons in justification of what might appear extraordinary to the mother-country and dangerous in practice to other countries, because, as they said, "a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

Every republic of the western continent has followed this example, and it would appear to be beyond the possibility of successful contradiction, that in this western world of ours the right of revolution or emancipation, to use the phraseology more common in the Latin American countries, exists. If it does not exist, we have no right to be here, and, if this theory of the origin of the state is not in accord with old world theories or books of authority, we should change the theory or discard the authority, rather than renounce our statehood. But the Declaration of Independence does not stop here, nor does it content itself with the mere statement of the causes which impelled separation, although those causes are set forth at great length. It defines the origin and nature of the state which the Declaration proclaimed; the origin and nature of the government and of the rights of the people creating and forming the state, and of the relations of the government to the people thus creating and forming the state. It first lays down certain rights possessed by the people, which

the framers did not claim to create, but which they regarded as inherent in the people, so inherent indeed as to be inalienable; and it is to be noted that they did not take to themselves any credit for their discovery, because the existence of the rights was self-evident. "We hold," they said, "these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." This is not and could not well be a complete enumeration of the rights which men possess as men, and which were likewise self-evident and unalienable. These were, in their opinion, either the most important or the most important for their present purposes among others which they did not stop to mention. However numerous these fundamental rights might be, there was no doubt that they existed, that they could not be taken away, and that to maintain these rights and to protect the people in the enjoyment thereof, meaning thereby all rights as well as those specified, governments were created. It is to be observed that the expression "governments" is used in the Declaration in the plural as synonymous with states, and that "government" is used as synonymous with the machinery created within the state in order to maintain these rights in the particular state. The Declaration thus says: "that to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." That is to say, men assembled for a political purpose and to create a political society which they call a state, to secure to them the enjoyment of the self-evident and unalienable rights. To maintain these rights within political society, men created some form of government, which, created by the people for a particular purpose, they unmake and make over according to their sovereign pleasure. Thus, "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers

in such form, as to them shall seem most likely to effect their Safety and Happiness."

I do not hold a brief for the theory of "natural rights." I neither claim that rights are inherent nor inalienable, but I do maintain that no conception of the state is or can be satisfactory to Americans which does not recognize the people of the American continent as possessed of these rights, and that no form of government will be tolerated by the American peoples which does not protect them in the enjoyment of these rights. The people of the United States find themselves in possession of these rights and they therefore regard them as "acquired" if they can not be said to be *natural or inherent* rights. And I further believe that the Government of the United States not only recognizes these rights, in so far as its citizens are concerned, but that it insists that governments in American countries in which the United States has influence shall secure to the people thereof the protection and enjoyment of these rights. I do not, however, need to argue this point, because there is a precedent that speaks louder than words. Thus, Mr. Root, when Secretary of War and speaking for the United States, declared as a condition of the delivery of Cuba to its people "the maintenance of a government adequate to the protection of life, property and individual liberty," and he reserved, on behalf of the United States, the right to intervene in Cuba not only for the preservation of Cuban independence but for the maintenance of these specified rights.

It would seem to be beyond question that the framers of the Declaration of Independence recognized the right and the necessity of peoples to create states which, however, were not to be the masters but the servants of the creators, and that the forms of government instituted within the states were to be changed by the people thereof at any time and in any way which "as to them shall seem most likely to effect their Safety and Happiness." For, seeing that independence would result from the armed conflict between the Mother-Country and the

colonists, our forefathers recognized that some step should be taken to form a government of the new states, and after the Declaration of Independence a form of government became necessary. In accordance therefore with the philosophy of that instrument, they created a confederation known as the United States of America, and the instrument of government drafted by the Congress in 1777 and approved by the last of the states in 1781 was known as the Articles of Confederation. This was the first conscious exercise of the right of the people of the American states to create a form of government, and, while it can not be said that it destroyed the rights which it was meant to serve, it is fair to say that it did not give satisfaction. Therefore, again appealing to the Declaration of Independence and the political philosophy which it contained, they exercised "the Right of the People to alter or to abolish" the form of government under the Articles of Confederation "and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." Representatives of the states chosen for this purpose met in the city of Philadelphia in 1787 and devised a new form of government, laying its foundation on such principles and organizing its powers in such a way as to them seemed most likely to effect and which, for a century and more, has effected their safety and happiness.

Now, just as the framers of the Declaration of Independence felt that a decent respect to the opinions of mankind required a statement of the causes which impelled them to separation, the framers of the Constitution of the young states felt it necessary to proclaim to the people composing them the principles upon which the new government was framed, in accordance with the philosophy of the Declaration of Independence, and to assert in unmistakable terms that the Constitution was made by the people and for the people and subject to change by them, lest it might appear that the acceptance of the Constitution could possibly be construed as an abroga-

tion of their rights. Thus, it is said in the preamble, that "the People of the United States, in Order to form a more-perfect Union"—for the union under the Confederation had been far from perfect—"establish justice, insure domestic Tranquility, provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." The preamble is thus a conscious or an unconscious recognition of the principle of Aristotle, confirmed by all human experience that "justice is the bond of men in states"—the first purpose mentioned in the preamble is to establish justice—"and the administration of justice, which is the determination of what is just, is the principle of order in political society."

The framers of the Constitution recognized the importance of their act; some of them had been signers of the Declaration of Independence and all of them knew what it meant. In the preamble to the work of their hands they stated their purpose in clear and unmistakable terms; for, as the great Chief Justice of the United States has said of them and of their handiwork, "as men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."[1] We know why they met in Philadelphia. We know what they tried to do and, better than they, we appreciate what they actually did. The journal of the convention has been published, the proceedings in the conventions held in each of the states to consider and ratify the Constitution, are within the reach of all who may care to consult them, and at the distance of a century we can, as it were, open the door of the convention in Philadelphia where fifty-five honest, upright and experienced men labored at a constitution which was not merely to be the

[1]Gibbons vs. Ogden, 9 Wheaton, 1, 188.

instrument of government for them and their descendants, but a charter of government throughout the world.

> We know what Master laid thy keel,
> What Workmen wrought thy ribs of steel,
> Who made each mast, and sail, and rope,
> What anvils rang, what hammers beat,
> In what a forge and what a heat
> Were shaped the anchors of thy hope.

To the western world the state is the creature of known men, animated by a purpose likewise known and acting in accordance with the doctrines proclaimed in the Declaration of Independence of the United States, which is no longer the heritage of one people and of one country, but, unrestricted in place and in time, it is, as Thucydides would say, "a perpetual possession."

In the American Conception the State Is an Artificial Person, the Creature of the People and Subordinated to Law.

If the state is the creature of its people and if the state is created for certain purposes, it follows that the state can not be superior to the people creating it and that it can not properly be or become destructive of the ends for which it, as well as its form of government, was created. It is subordinated to its creators. Law prescribes the duties and safeguards the rights alike of men and of state, and of government as the agent of man within the state. There is a difference, it may be in form but not in substance. Man is a natural person, but subordinated to law in relation to his fellow men. The state, made up of men, subordinated to law in their mutual relations, is an artificial person, the creature of law and therefore subject to law, because, being artificial, it can not exist of itself, but must be created. It matters little, indeed it matters nothing, in law whether the natural person be large or small, rich or poor, wise or unwise. Under

the law, each is the equal of all and under the Declaration of Independence all men are created equal. It matters little or nothing under law that the artificial person, whether it be a body politic which we call a state, or a corporation of an ordinary kind, be large or small, rich or poor, for each is the creature of law and is subordinated to the law of its creation.

Although I would rather not argue the question, I can not, in view of its importance, content myself with a mere statement. I feel that I must cite three authorities from among the many which might be selected, and I naturally choose the decisions of American courts of justice to lay down what must be considered an American, if we are not yet justified in holding it to be a universal, doctrine.

The first case is intended to show, and I believe it does show, that the colonists regarded the colony or province as a corporation, having a personality separate and distinct from that of the inhabitants composing it, and it explains how easily and naturally the same colonists considered the states which succeeded the colonies, and indeed the United States, as corporate bodies invested with the powers of a corporation and with a distinct, albeit artificial, personality.

The second case is intended to show, and I believe it does show, that, by association of states and without the action of a superior authority, a body politic comes into being, and as an artificial person this body politic is possessed of the rights of an artificial person.

The third case takes up the state where the second decision leaves it, and is intended to show, and I believe it does show, that the body politic, which we call the state in international law, is an artificial person and, as such, subject to the duties of an artificial person.

The first case to which I refer in this connection is entitled *Gray* v. *Paxton,* and was tried in the Province of Massachusetts Bay. On January 13, 1761, the House of Representatives "resolved that Harrison Gray, Esq., the Province Treasurer, be and hereby is empowered and directed to de-

mand and receive the aforesaid sum of 475£, 9s, 11d of the respective persons from whom it shall appear to be due; and in case of their refusing or neglecting payment for the space of one month after demand, to bring an action or actions at common law for recovery of said sum, to the use of his Majesty, to be applied to the support of this Government as this court shall hereafter direct." The point which I wish to bring out by this case is admirably stated in a note of it made by John Adams, then at the Bar and later President of the United States, who says:

> Otis drew a writ *vs.* Paxton for Money had & received to the use of the Province. Prat pleaded in abatement, That, although the suit was brought in Gray's name, although Gray was Plaintiff, yet no promise was alleged to have been made to Gray. The Defendant is alleged to be indebted to the Province for money received to the Province's use, and to have promised to pay it to the Province, yet the Province is not Plaintiff. It is *Gray* v. *Paxton,* but it should have been *the Province of the Massachusetts Bay* v. *Paxton.*

The court decided in favor of the defendant for the reasons stated by Mr. Adams, namely, that Gray should have sued not in his own name but in the name and in behalf of the Province of the Massachusetts Bay, because, as Mr. Adams points out in a later passage, "a corporate body is one person in law and may sue or be sued."[1]

Now, the meaning of this is very simple. The Province of Massachusetts Bay was a corporation, endowed by law with personality, and the corporation, as Mr. Adams properly said, "may sue or be sued."

It is not necessary to rely upon unaided reasoning to sustain a contention that by the Declaration of Independence the states, called in that immortal document the United States of America, became in fact and in law a body politic possessing a distinct, although artificial, personality and enjoy-

[1]Quincy's Massachusetts Reports, 1761-1772, p. 546.

ing the rights appertaining to an artificial person. Nor is it necessary to refer to the Articles of Confederation forming a perpetual union of the states under the title of the United States of America, which became effective on and after March 1, 1781. Nor, finally, is it necessary to rely upon the holdings of the Supreme Court of the United States as to the nature of the union established by the Constitution of the United States, devised in Philadelphia in 1787, ratified by the people, and put into effect on the 4th day of March, 1789. We have a decision of the Supreme Court of Pennsylvania on the very point in question, decided in 1779, before the creation of a government for the erstwhile colonies under the Articles of Confederation or under the Constitution of the United States, which decision has never been questioned, much less overruled, recognizing that by the Declaration of Independence the United States became a body corporate or an artificial person. As this case is so interesting and so fundamental, and depends upon the reason of the thing (for the court had no precedent to guide it), I feel that I should state it somewhat at length.

The case in question is *Respublica* v. *Sweers,* decided in 1779, at the April term, by the Supreme Court of Pennsylvania, and found in the first volume of Dallas' Reports, at page 41. The defendant Sweers was a deputy Commissary General of Military Stores in the armies of the United States of America. As such, he was indicted in November, 1778, for forgery upon two bills "with intent to defraud the United States." The first indictment was for altering a receipt and the second was for forging a receipt. He was convicted upon both indictments, and his counsel took, as the report says, "several exceptions to the form and substance of these indictments, upon a motion in arrest of judgment." In pronouncing sentence, Mr. Chief Justice McKean, speaking for the Court, said:

> The first exception was, "that, at the time of the offense charged, the United States were not a body corpo-

> rate known in law." But the court are of a different opinion. From the moment of their association, the United States necessarily became a body corporate; for, there was no superior from whom that character could otherwise be derived. In England, the king, lords and commons, are certainly a body corporate; and yet there never was any charter or statute, by which they were expressly so created.

Not only is the judgment interesting, but the form of the sentence attracts our attention, for, on the first indictment, the defendant was sentenced to "a fine of 70£ and imprisonment until the 4th of July, the anniversary of American Independence."

Respublica v. *Sweers* was a criminal case, and it is to be borne in mind that in cases of this kind the charge as made must be strictly proved, because every presumption is in favor of the innocency of the accused. The United States would not have been considered a political corporation by virtue of the Declaration of Independence, and before the Articles of Confederation had gone into effect, unless it had been clear beyond the possibility of successful contradiction that the United States, in fact and in law, was a corporation. It will be recalled that the first exception taken by defendant's counsel was "that at the time of the offense charged, the United States were not a body corporate known in law."

The third case to which I have referred, as showing that a state is an artificial person, or a corporation, and as such subordinated to the law affecting artificial persons or corporations, is doubly American, if this expression be permitted, because both the court trying the case and the state involved were American.

In the year 1889, the question arose in the Court of Appeals in the State of New York whether a state (in this case the Republic of Honduras) was to be considered as a foreign person or as a foreign corporation, which by the laws of New York was required to deposit security for costs before be-

ginning a proceeding in a court of justice. In holding that a foreign nation was to be considered as a moral person or a foreign corporation and as such within the terms of the law, Chief Judge Ruger said:

> Section 3268 of the Code of Civil Procedure provides that a defendant, in an action brought in a court of record, may require security for costs, in cases, among others, where the plaintiff was, when the action was commenced, either "a person residing without the state"; or "a foreign corporation." The plaintiff claims to be a foreign independent state.
>
> It is urged by the plaintiff that it is neither a person nor a foreign corporation, within the meaning of the Code. It is not disputed but that the plaintiff is an independent government, recognized as such by the United States, and capable of entering into contracts and acquiring property, as well as competent, through the rule of comity, of bringing and maintaining actions in the courts of this country; but it is claimed that it does not come within the description of legal entities authorized to require security for costs. That it is within the spirit of the enactment, we think can not be disputed, and we are also of the opinion that it is within the letter as well.
>
> Vattel defines "nations or states to be bodies politic, societies of men united together for the purpose of promoting their mutual safety and advantage by the joint effort of their combined strength. Such a society has her affairs and her interests. She deliberates and takes resolutions in common, thus becoming a moral person, who possesses an understanding and a will peculiar to himself, and is susceptible of obligations and rights." (Law of Nations, 1; Wheaton's International Law, chap. 2, sec. 1, 2; Bouvier's Institutes, title "Nation.")
>
> That such a being constitutes a legal entity, capable of acquiring and enjoying property and protecting itself from injuries thereto in the courts of foreign countries, has long been recognized and established in the tribunals of civilized nations. (*Republic of Mexico* v. *De Arrangoiz,* 5 Duer, 636; *Hullet* v. *King of Spain,* 1 Dow & C., 169; *Cherokee Nation* v. *Georgia,* 5 Peters, 52.)

There can be no doubt but that under title 2, chapter 10, part 3, of the Revised Statutes, providing for security for costs in an action brought by any plaintiff, not residing within the jurisdiction of the court, that foreign states and nations were required to give such security, and we do not think that the provisions of the Code were intended to change the law in that respect.

Section 3268 of the Code is stated to be a reënactment of the previous statute, and it can not, we think, have been intended thereby to take away the right which resident defendants had to require security for costs. No reason is seen for such a change, and we do not think any was intended to be made. The word "person" was, we think, used in its enlarged sense, as comprising all legal entities except foreign corporations, which were authorized to bring actions in this state. In that sense it embraces moral persons having legal rights, capable of entering into contracts and incurring obligations, as well as natural persons. The statute must be construed with reference to the objects it had in view, the evils intended to be remedied and the benefits expected to be derived from it; and, as thus construed, we can see no reason why the plaintiff is not included within the description of persons intended to be subjected to its obligations.[1]

Conception of the Latin American State Is the Same as the North American Conception

The views which I have ventured to express concerning the origin and nature of the state, the powers which it properly exercises, and the limitations imposed upon it by the people in the act of creation, are based upon the theory and practice of the United States of America as I understand that theory and practice to be. But these views are susceptible of a much wider application. They are, I believe, applicable to all the American republics and they are shared by their publicists.

Our distinguished colleague, Mr. Alejandro Alvarez, has sketched with the hand of a master the origin and nature of the Latin American states in his monograph entitled "Chilean

[1]The Republic of Honduras v. Marco Aurelio Soto, 112 New York Reports, 310.

Diplomacy during the Period of Emancipation and American International Society," and I beg to invoke his authority on this point. After recounting the origin and nature of the Latin American states, and briefly but adequately sketching the origin and nature of the United States, he says:

> Although the difference between the movement of emancipation and the institutions of the United States and of Latin America are important, on the other hand there are, from a larger point of view, between both groups of countries, points in common and of the same character which give a certain unity to the American continent and differentiate it in turn from Europe.

Mr. Alvarez feels justified in thus concluding his examination of the question:

> In Europe the state is the incarnation of power and the powers of government do not have a strictly limited character.
>
> In America, inasmuch as the countries are the product of a revolutionary movement and the direct result of the popular will, it is a principle more or less expressly admitted in all constitutions that the authorities possess no greater rights than those with which they are directly invested by law.
>
> The base is individualism; that is to say, the exaltation of the individual endowed with natural rights, which he brings to society and which must be guaranteed, a conception borrowed from the political philosophers of the 17th and 18th centuries.
>
> For this reason, guarantees in favor of individuals are differently conceived. In America they have the express character of limitations of governmental action, a character which does not obtain in Europe.[1]

The American idea, in a nut-shell, is contained in the social compact of the charterless and homeless Pilgrims of the May-

[1]Alvarez, La Diplomacia de Chile durante la Emancipación y la Sociedad Internacional Americana, pp. 173, 176.

flower which they drafted on November 11/21, 1620, before setting foot upon American soil, and which I beg to quote:

> In the name of God, Amen. We whose names are underwritten, the loyall subjects of our dread soveraigne Lord, King James, by the grace of God, of Great Britaine, Franc, and Ireland king, defender of the faith, etc., haveing undertaken, for the glorie of God, and advancemente of the Christian faith, and honour of our king and countrie, a voyage to plant the first colonie in the Northerne parts of Virginia, doe by these presents solemnly and mutualy in the presence of God, and one of another, covenant and combine our selves togeather into a civill body politick, for our better ordering and preservation and furtherance of the ends aforesaid; and by vertue hearof to enacte, constitute, and frame such just and equall lawes, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meete and convenient for the generall good of the Colonie, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cap-Codd the 11. of November, in the year of the raigne of our soveraigne lord, King James, of England, France, and Ireland the eighteenth, and of Scotland the fiftie fourth. An°: Dom. 1620.[1]

With these pregnant words ringing in our ears we can understand what the poet Lowell meant when he spoke of the Pilgrim fathers as "stern men, with empires in their brains." For, if we eliminate the expression "the loyall subjects of our dread soveraigne Lord, King James," the Declaration of Independence is already here as the acorn, needing only congenial soil for the sturdy oak.

It is unnecessary for present purposes to examine further the question of the origin of the American state or its nature, as my purpose is merely to make clear that the state, at least in the American conception, is a creature of law and is subordinated to the law of its creation.

If this is true of one state, it must be true of other states.

[1] Bradford's History of Plymouth Plantation, edited by W. T. Davis, 1908, p. 107.

It is certainly true of the American states, and, assuming that Chief Judge Ruger's decision in the case of *Honduras* v. *de Soto* is correct, it follows that it is true of all states. International law speaks no uncertain language in this connection, and the authorities are at one in considering a state from the point of view of law to be a moral or artificial person, body politic or corporation. Assuming the correctness of Aristotle's view that men are associated in political society and that the unit of political society in international law is a state, it follows that, if there be a society of states or of nations, it is a society of political entities, each one of which is independent of the other and is the equal of each or all, according to the philosophy of the Declaration of Independence, because we can not claim a right for our own state which we deny to any other.

There Must Be, Therefore There Is a Society of States or Nations

We do not need to speculate whether the states, like individuals, would, if left to themselves, form a society. It would seem, however, that Aristotle's reasoning in this matter is susceptible of a larger application, because, if men form societies by virtue of a social instinct, and political societies, which we call bodies politic, because they are as he says political animals, it would follow that, all states being composed of men of the social and political instincts attributed to them by Aristotle, the societies which they have made would themselves tend to form a larger society. The language of Aristotle is so interesting that I beg to quote it. "A social instinct," he says, "is implanted in all men by nature," by virtue of which they form society, and "that man is by nature a political animal," by virtue whereof he forms political society.

There Must Be and There Is, a Solidarity of Nations as Recognized by the Hague Peace Conferences

It is not necessary, however, to rest the existence of the society of nations upon Aristotle, although the application of

the social and political instinct with which he invests man would tend to justify the contention that a society of states or of nations would come into being. I do not need to argue the matter, as the states themselves have by their accredited representatives on a very solemn occasion within the past decade confirmed their solemn act recognizing the existence of such a society. Thus, in the preamble to the convention of 1899 for the pacific settlement of international disputes, the representatives of twenty-six nations in conference at The Hague spoke of their governments as "recognizing the solidarity which unites the members of the society of civilized nations," and, in 1907, the representatives of forty-four nations, likewise assembled in conference at The Hague, confirmed this statement.

Nor do I need to prove that the advantages of the society of nations are so great that it must needs come into being; because it is in being and its existence is certified by the official act of forty-four states. It is to be observed, however, that the society spoken of is the society of civilized states, and that the representatives of the forty-four states recognized the solidarity uniting the members of the society.

Whether or not the views which I have put forward as to the nature of the state be contested by European publicists, it is a fact they are not contested by American publicists, so that we have twenty-one states, one less than half of all those participating in the second Hague Peace Conference, recognizing this doctrine of the origin and of the nature of the state, and they necessarily recognize at one and the same time their own solidarity when they recognize the solidarity of the states forming the society of civilized nations. If this conception of the nature of the state, common to American publicists, be not accepted by the world at large, it is nevertheless a consolation to us to know that it is and must be accepted by the twenty-one American republics, for we know that a doctrine accepted by these twenty-one states has a fair chance to become universal. In any event, it is continental, and the doctrine of a continent can not be disrespectfully treated.

The Hague Peace Conference has thus solemnly spoken on two occasions of the solidarity which unites the members of the society of civilized nations. And if this solidarity exists between and among the most distant and diverse members of the society of nations it is reasonable to expect that solidarity would exist in a more marked degree between and among nations which are to one another as neighbors, and whose antecedents and institutions are similar if not identical. We would expect an American solidarity, and the expectation is borne out by the facts.

The Solidarity of Nations is an American Doctrine and is Most Marked Among the Republics of the American Continent.

Speaking in the first instance of the English colonies of North America, it is common knowledge that like origin, like traditions, like language, like institutions and a common grievance brought them together for a redress of this grievance and held them together after it had been redressed by independence. The solidarity here was so deep rooted that it resulted in the legislative, administrative and judicial union which we call the United States of America. Had the solidarity which drew the colonies inevitably into oneness been less evident and the causes more remote, the states might have maintained their independence of one another while recognizing their common interest to defend themselves against the foreigner.

This is what has happened in Latin America, where federation has been suggested although not effected, but where a solidarity exists which causes the foreigner to look upon them as if they were one; drawn together by common origin, by a common language and by common traditions, they are, as it were, many states but one people. They are the product of revolution, just as the United States is the product of revolution; the likeness of origin and the similarity, not to say identity of institutions, reënforced by geographical position, have brought them together, so that there exists an American solidarity not

merely like that recognized by The Hague but a solidarity which is a name and an institution.

Pan Americanism is a fact, although its opponents would call it a sentiment, as if a sentiment were not a fact, and it has as its outward and visible sign of a spiritual and inward grace the Pan American Union, composed of the twenty-one American republics.

I would like to dwell a moment upon Pan American solidarity, and lest I should seem to give a freer rein to imagination than to facts let me quote several passages from the authoritative and charming study, which I have already laid under contribution, of our distinguished colleague, Alejandro Alvarez. Thus he says:

> The notion of solidarity is essentially American and had its most brilliant manifestations in the struggle of the Spanish colonies of this continent for their emancipation. . . . This solidarity was nothing else than a sentiment of mutual affection among all of the colonies, based upon a community of origin and of destiny.
>
> Under Spanish domination they were united by intimate bonds of fraternity, the result of identity of blood, language, religion, education, legislation and customs, and the fact of a common submission under a like colonial régime.
>
> But in that epoch this sentiment did not find a noticeable expression. It was only when a foreign danger menaced them and the movement of emancipation began to take form that the colonists realized they had a common cause to defend.[1]

In another passage of his work, the same distinguished publicist says:

> Without the largeness of view that this continental solidarity gave to the struggle, without the energy and the generous warmth which this ideal communicated to the spirit, it would have assuredly been impossible for Latin America to obtain its independence at the time in which it did.[2]

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[1] Alvarez, La Diplomacia de Chile durante la Emancipación y la Sociedad Internacional Americana, pp. 57–8.

[2] *Ibid.*, p. 61.

A little later in the course of his narrative, Mr. Alvarez traces the growth of a continental solidarity as distinct from that of the Spanish American states.

> This solidarity thereafter took a new direction, characterized by the representations made by the United States before the European courts to obtain their recognition of the sovereignty of these countries, and by the recognition which the Government of the United States itself hastened to make. The proclamation of the Monroe Doctrine came to the aid and strengthened the sentiment, combining in a happy formula the ideas of the American nations concerning their right to preserve their independence and to oppose the attempts of the European states to oppress, to reconquer, or to colonize any part of their territory.
>
> Pan American solidarity, therefore, came into existence at one and the same time with Spanish American solidarity, but before Latin American solidarity, which would also include Brazil. This last continental tie only came into being during the second half of the nineteenth century, based upon the likeness of the political and international problems of Brazil to those of the other Latin American states of the new continent.[1]
>
> Likewise in the period of emancipation there were writers and statesmen who foresaw the larger and more lasting solidarity which should make itself felt not only in periods of struggle but also in the normal life of the peoples of the American continent, giving form to their mutual relations and coöperating in their growth and progress. That is to say, they foresaw and they desired to organize a real American international society, which by the unity of its views, its subordination to law and its peaceful tendencies stood in marked contrast with the international European community, which at that time was constantly engaged in recurring struggles for domination.[2]

Let me conclude this brief statement of American solidarity with another quotation from Mr. Alvarez, in which he points out the influence of similarity of institutions upon solidarity.

[1] *Ibid.*, pp. 66–7.
[2] *Ibid.*, pp. 82–3.

> The similarity of this system among the Latin American states and between them and the United States reënforced the sentiment of solidarity among all of them, with the result that the international American society clothed itself with a character different from that of Europe.[1]

As a citizen of the English-speaking Republic I have hesitated to speak of the solidarity which I hope and believe exists between the twenty Latin American countries and the Republic of the North. I felt that you would prefer a statement of American solidarity, if it were to be made, to come from a Latin American source, and I have therefore drawn upon the admirable statement of American solidarity made by Mr. Alvarez, with whom Pan Americanism is at once a religion and a reality.

For the purposes of the American Institute, dealing with American problems, we can accept the American doctrine of the origin and nature of the state and, without seeking further to demonstrate the solidarity which unites the American republics, we need only point to the Pan American Union, with its governing board in Washington, composed of a duly appointed and accredited member of each of the American republics, in order to establish the existence of a very marked and special solidarity uniting the members of the American continent.

The Society of Nations Needs Law and Therefore a Law of the Society Exists

I have been anxious to consider the American state from the point of view of its founders, to establish the existence of the society of nations and within that society a smaller group, if necessary, composed of the twenty-one American republics, recognizing the American conception of the state, because I want to show in the next place that there is and must be a law of that society just as there is and must be a law for any society.

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[1] *Ibid.*, p. 177.

It is true that in this matter I am dealing again with truisms, but, if all persons and nations professing truisms practiced them, law and order instead of anarchy would exist between nations and we would not be meeting at this moment in the midst of a world war, which threatens the existence of the society of nations and which jeopardizes civilization.

I might perhaps quote Aristotle on the question of law and prove its need by his apt illustration of law even among robbers, but I shall content myself with the happier expression of Cicero: *Ubi societas, ibi jus*—"where there is society, there is law." Where men come together and form society, they agree upon certain rules of conduct, prescribing the rights of the members and the duties of each toward one and all. No matter how small the society may be, there must be some rules regulating admission to it, otherwise, it is open to all who care to enter, and, unless there be rules of conduct agreed upon, there may be at any time confusion and anarchy. Whether the purpose of the society be scientific, social or political, the need of a rule of conduct to control and to guide its members is obvious, and the experience of mankind has shown how necessary and wholly indispensable such rules of conduct are in political society.

Within each and every nation laws exist prescribing the rights and duties of the citizens or subjects making up the state, and these rules or laws taken together constitute what is called national law. An examination of the systems of law of the different nations shows that there are some principles everywhere prevailing. As they are to be found everywhere in modern civilized society, they can be called universal, and, being universal they may likewise be termed fundamental. These principles are (1) the right to life, (2) the right to liberty, (3) the right to the pursuit of happiness, as proclaimed by the Declaration of Independence of the United States, (4) the right to legal equality, (5) the right to property, and (6) the right to the enjoyment of all these rights. This is a very brief and very summary statement of a very

long process, for the rights thus enumerated within the compass of a single sentence have been the slow and almost inperceptible growth of centuries. It would be historically false to assert that upon them the system of national law has been reared. They are rather the half dozen principles to be deduced from the municipal codes, which exist in the countries which, taken together, make up the society of nations. But if these provisions which I venture to call universal and fundamental are to be taken as the culmination of development and as the résumé of the different systems, it follows that from them we could derive the various provisions of the different municipal codes if the codes were not in existence. We can not claim, as I have already said, that these principles, historically considered, are the foundations upon which the municipal codes have been based, but we are justified analytically, though not historically, in maintaining that they are at the present day, as the result of a long and painful period of development, to be considered as the foundations upon which the municipal systems of law securely rest. Admitting that these principles have been the result of long and painful growth, the question arises is it necessary that we shall go through the same processes in developing international law? Must we repeat on an international scale what has been done in every country and therefore done upon the largest of possible scales? Can we not regard these principles as already established, without the necessity of going through the process of their development and upon them as established build the law which is to obtain between and among nations? We are asking nothing new of the nations. We are not suggesting that they take a leap in the dark or that they pledge themselves to accept the unknown, for these principles, existing in every nation, are familiar to the people of each nation. They are therefore familiar to all persons who, grouped artificially in states, make up the world, or, at least, that part of it which we call the society of nations.

To accomplish this we need only ask that those principles which are applied within each group and which are thus com-

mon to all, shall be held to apply between and among the peoples of the different groups, just as they apply between and among the persons of each and every group considered as a separate and distinct unit. From this viewpoint, the only difficulty in the way is to persuade the nations that these fundamental principles can be accepted and applied by them in their mutual relations; but, as the very principles in question have already been accepted by their subjects and citizens, there should be no insuperable barrier in the way to prevent them from regulating the conduct of nations, if only what I have ventured to call the American conception of the state be adopted.

Although I have already urged this conception upon you, let me nevertheless repeat it in this connection, as it is very material to my argument. The American conception, as I understand it and as I advocate it, is that the state is a moral, juristic or artificial person, a body politic or a corporation; that the state thus conceived is a creature of the popular will, subjected to and subordinated to the law of its creation; that it is a mere creation of the people, a mere agency of the people, the servant of the people, to carry into effect the purposes stated in the Declaration of Independence, with a form of government most likely to effect the safety and happiness of the people creating the state and devising the form of government. From this point of view, the state is not something mystical, superhuman and of divine origin, nor is its form of government created to meet the desires of a class or of a privileged few or of a sanctified and glorified family.

But before we can make any progress in the direction which I have indicated, we must ask ourselves whether the fundamental conceptions of municipal law are capable of being translated into terms of international law, and if, when so translated, they can serve as the foundation upon which an adequate and progressive law of nations may be built. It seems to me that each one of these principles which I have ventured to term fundamental can be internationalized and applied to the relations of nations. The right to life, stated in terms of interna-

tional law, is the right of the state to exist and to maintain its existence. The right to liberty is the right of the state to develop itself without hindrance from without, that is to say, to be independent of the control or supervision of another state. The right to the pursuit of happiness is, in terms of international law, the right to pursue that conduct best fitted to the state and which when pursued makes for the happiness of its people. The right to legal equality—the Declaration of Independence proclaims that all men are created equal—means in municipal law not that every person is equal in capacity or in ability, but that every person has the same rights and duties in law and under law, a right which in terms of international law means that every state, be it large or small, rich or poor, is a juristic person and as such the equal of every other juristic person which we call a state or nation. The right to property, everywhere existent in municipal law, expressed in terms of international law, means the right of the state to have and to hold territory within defined boundaries and to exercise within its boundaries exclusive jurisdiction. And, finally, the right to the enjoyment of these various rights exists in international law as well as in municipal law, because, if rights are not to be enjoyed they are useless.

At the same time, it will not have escaped attention that each right raises a duty, for, if I have a right to my life, everybody is bound to respect this right, otherwise it is to me of no avail. Every right on the part of one person is accompanied by a duty on the part of all persons to observe it, and on the part of the government, instituted by the people forming the state, to protect this right and to protect me in its enjoyment.

Now, I have been bold enough to say that these are the fundamental rights of municipal law and of every state belonging to the society of nations, and I am bold enough to assert that they are likewise the fundamental rights of every state considered as a member of the society of nations. I believe that they are the foundation of the law of nations just as

they are the foundation of the law of each nation, and that, just as the provisions of the municipal law can be developed from them, so the provisions of international law can be developed from them, and indeed that the provisions of international law must be developed from them, if we are to have law instead of anarchy in the society of nations. We may readily admit this to be true in much the same way as we say that two and two make four, without stopping to draw the consequences from the admission. We look upon these principles as true only in the abstract, not as applicable to the relations of nations; yet if we accept them we must insist that they be applied between nations. Otherwise it is useless to descant about them.

I do not intend at this time to dwell longer upon this subject, as, during the course of this session of the Institute, I shall present a project dealing with the rights and duties of nations, based upon the fundamental rights of municipal law, and I shall accompany the declaration with a commentary showing that each one of these principles is not merely true in municipal law, but that each is true in international law; that these principles have not merely been devised by philosophers and expounded in treatises on the science, but that they have been authoritatively stated, and applied by the Supreme Court of the United States in cases involving them, and that they are accepted as thus defined and applied by every republic of the western world.

But I can not resist the temptation to reënforce, by a semblance of authority, the statements which I have felt justified in making, and indeed I feel that I might properly expose myself to criticism if I did not, however briefly and inadequately, put you in possession of these authorities, in order that you may here and now test the accuracy of my conclusions and be in a position to accept, to reject, or to modify the declaration of rights and duties when its text is laid before you. In the language of the Declaration of Independence, "let facts be submitted to a candid world."

In the first place, and by way of introduction, I beg to quote the language of a distinguished North American jurist, peculiarly versed in what may be called comparative jurisprudence. In his "Modern Political Institutions," published well-nigh twenty years ago, the Honorable Simeon E. Baldwin, who is the presiding officer of the subsection of public law in the present Scientific Congress, said:

> The principles of jurisprudence, also, recognized as governing the relations of private citizens to each other, are substantially the same in all the leading nations of the world; and they are the same because they are derived from the conception of the equality of right.[1]

The Half Dozen Fundamental Principles of Law for the Society of Nations as Stated and Defined by the Supreme Court of the United States.

Let me now take up the fundamental principles of municipal law which I have sought to express in terms of international law. In the first place, I have stated that the right to life, everywhere recognized in municipal law, is in the law of nations the right of the state to exist and to maintain its existence. On this point I beg to call your attention to two cases, one American, the other English, which, taken together, state the nature and extent of the right and its necessary limitation.

Thus, in the Chinese Exclusion case, decided by the Supreme Court of the United States in 1888, it was expressly stated:

> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated.

You will observe that the court was careful to limit the right

[1] Baldwin's Modern Political Institutions, 1898, p. 341.

which it claimed by the use of the expression "nearly." Otherwise, necessity, that is to say, alleged necessity, might override law.

The English case is entitled *Regina* v. *Dudley,* decided by the Queen's Bench Division of the High Court of Justice in 1884.[1] It held, in effect, that it was unlawful for shipwrecked sailors to take the life of one of their number in order to preserve their own lives, because it was unlawful, according to the common law of England, for an English subject to take human life unless in self defense against the unlawful attack of an assailant threatening the life of the party unlawfully attacked. It is true that this was a case of private law, but it is, in my opinion, equally applicable to the artificial as well as to the natural person. The plea advanced in this case was the plea of necessity, but after an elaborate examination of this defense the court very properly rejected it. In the course of his opinion, Lord Chief Justice Coleridge, who had had large experience in public affairs and, as Attorney General had been the adviser to his Government in international as well as in municipal law, made some statements which deserve quotation. Thus, he said:

> Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be justified by some well-recognized excuse admitted by the law. It is further admitted that there was in this case no such excuse, unless the killing was justified by what has been called necessity. But the temptation to the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. Though law and morality are not the same, and though many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence, and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defense of it. It is

[1]Reported in 15 Cox's Criminal Cases, p. 624; 14 Queen's Bench Division, p. 273.

> not so. To preserve one's life is, generally speaking, a duty; but it may be the plainest and highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live but to die.

After having rejected the plea of necessity, the Lord Chief Justice points out the consequences of its admission in the following passage:

> It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting was chosen. Was it more necessary to kill him than one of the grown men? The answer must be, No.
>
> "So spake the Fiend, and with necessity,
> The tyrant's plea, excused his devilish deeds."

The right to liberty, which in terms of international law is the right of the state to develop itself and to be independent of the control or supervision of any other state, and the right of equality are so closely related, indeed they are interrelated, that they may be considered together as different phases of one and the same right, and they are in fact so treated by the authorities. Thus, Sir William Scott, later Lord Stowell, said, in the case of *The Louis,* decided in 1817.[1]

> Two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation

[1]Reported in 2 Dodson's Reports, pp. 210, 243–44.

> of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate.

The Supreme Court of the United States is no less outspoken. Thus, the great Chief Justice of the United States, John Marshall, said in the case of the *Antelope,* decided in 1825:[1]

> No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. . . . As no nation can prescribe a rule for others, none can make a law of nations.

It would seem that these two cases, decided by the greatest judges in matters international which the English-speaking countries have produced, settle beyond the fear of contradiction the right of a nation to the pursuit of happiness and to be considered as the equal of all other countries.

I shall ask your indulgence, however, while I dwell somewhat upon the question of equality, inasmuch as we hear it constantly asserted that it is a mere phrase, designed to tickle the ear of the small states, but that it is unthinkable that great nations should seriously consider applying it in their relations with the smaller states. The lion and the lamb, we are told, can not lie down together. As a concession, equality is recognized in strictly legal relations, for the advocates of superiority admit that in courts of justice, although nowhere else, the great and the little may stand together for a moment upon an equality. It is unknown in political as distinct from legal relations. Indeed it is bad form even to suggest it in society.

That equality has been a hope and goal, rather than a reality and a practice, may be admitted, but if the conception of the state which I have laid before you be correct, and if the theory

[1] 10 Wheaton's Reports, pp. 66, 122.

and practice of the United States be worthy of notice, it will be evident that equality is not the strange, uncouth, unknown and impossible thing which the superciliousness and boundless arrogance of the larger states would have us imagine.

If a state be a body politic, a corporation, a creature of the law rather than of the imagination, and an agent of the people rather than an agent of the monarch's divine right to govern wrong, it will require more obtuseness on the part of the large states to misconceive this conception and to reject it in the future than we are justified in imputing to them or their rulers. For if a state be a body politic, it must have the same rights and duties before and under the law, although the influence of one state may be greater than that of another. "There is one glory of the sun, and another glory of the moon, and another glory of the stars: for one star differeth from another star in glory."

There is, however, something to be said even for political equality, as distinct from legal or juridical equality, and the United States has said it. In the Constitutional Convention which met in Philadelphia in 1787, the advocates of the big states proposed, as is the wont of such, to ride rough-shod over the little ones. The government which they proposed was to be one in which they should, so to speak, hold the whip-hand, and the little states were to deem themselves fortunate to be permitted to enjoy the pleasures and the advantages of the company of their betters.

But there was a lion in the way. The little states were more numerous than the large ones, just as in this world of ours the poor are more numerous than their supposed betters, although, as President Lincoln has said, "God must like the common people, or he would not have made so many of them." The little states unexpectedly refused to cut off their own heads. They were unwilling to enter a union—and membership was to be voluntary—in which their rights, political as well as legal, were not to be the same. The large states proposed that a Congress, consisting of two chambers, should be

composed of delegates or representatives, all chosen according to the population of each state, giving the populous states larger representation and enabling them to outvote the less populous states.[1] But the people of the small states considered that they were as good as the people of the large states; that in the Revolution, which had so happily resulted in their independence, they had staked their lives, their liberties and their property just as the large states had done; that they all were sovereign and equal states, and that in the final adjustment they should be recognized and treated as equals. They therefore proposed that the states should be equally represented.[2] The result was a compromise:[3] a Congress consisting of two houses—the Senate, to be composed of two members from each state, and the House of Representatives, to be chosen upon a basis of population from the different states. The first article of the Constitution thus states this fundamental and beneficent compromise:

> All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.
>
> The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years, and each Senator shall have one vote.
>
> The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for the electors of the most numerous branch of the state legislature.

In order that the states as they existed should not be dismembered or deprived of their equal representation in the Senate, it was further provided in the Constitution that new states should not "be formed or erected within the jurisdic-

[1] Farrand: The Records of the Federal Convention, 1911, vol. I, p. 228.
[2] *Ibid.*, pp. 241, 242.
[3] *Ibid.*, pp. 523, 526.

tion of another state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislature in the states concerned as well as of the Congress," and as far as representation was concerned, "that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

The fears of critics of democratic government seem in large measure to be that democracy, meaning thereby the many rather than the minority, will make law where they can not make right, and that we are in the danger of substituting the tyranny of the many for the tyranny of the few or of the one. It is to be observed that this criticism can be met and indeed has been met in the American system by the majority consciously imposing a restraint upon themselves in the exercise of what they declare to be their rights, for, while the American people reserve the right to amend their Constitution and can at any moment resume the power which they granted in the Constitutional Convention in 1787, they nevertheless made the exercise of the right to amend the Constitution depend upon more than the will of a majority of the Congress or of the state or of the people within the states. Thus, Article V of the Constitution, dealing with this question, which has been called the keystone of the Federal fabric, provides:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress.

This is the problem in a nutshell and this is the solution. Restraint imposed from above or from without is tyranny or

despotism. Restraint imposed from within is self-restraint, and is liberty.

In the teeth of this history and in view of the fundamental provisions of the law of the land, it is difficult to see how a North American with a knowledge of one and a respect for the other can object to equality, whether it be political or legal.

The right to property, recognized alike in municipal and in international law, means in this latter system, as I already have said, the right of a state to hold territory within defined boundaries and to exercise exclusive jurisdiction in such territory. The theory of the nature and extent of this right is admirably stated, if I may say so, by Mr. Chief Justice Marshall in the following passages from his judgment in the case of the schooner *Exchange,* decided in 1812:[1]

> The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation, within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

The great Chief Justice, however, recognized that *summum jus* is often *summa injuria,* and he therefore qualified the extreme right by the existence of a duty. Thus:

> A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world.

[1] 7 Cranch's Reports, pp. 116, 136–7.

This duty he bases upon the common interest of equal and independent nations. Thus:

> This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.

I have frequently remarked that rights would be worthless things if they did not carry with them the duty of observance. This principle is fundamental because, without it, the rights which I have enumerated might exist in theory, but they could not exist in fact. We could establish by argument the right to enjoyment and the duty of observance; but fortunately we do not need to do so, as the Supreme Court of the United States has anticipated our needs and has supplied us with the authority, going even further than we could ask, by making it the duty of each and every state not merely to recognize the rights of others but to protect the rights thus recognized.

In the case of *United States* v. *Arjona,* decided in 1886,[1] Mr. Chief Justice Waite, peculiarly qualified by his large experience in public affairs—for had he not represented the United States before the Geneva Tribunal of Arbitration—said for the court:

> But if the United States can require this of another, that other may require it of them, because international obligations are of necessity reciprocal in their nature. The right, if it exists at all, is given by the law of nations, and what is law for one is, under the same circumstances, law for the other. A right secured by the law of nations to a nation, or its people, is one the United

[1] 120 U. S. Reports, pp. 479, 487.

States as the representatives of this nation are bound to protect.

I am very anxious to have these matters considered and to have the Institute define its attitude toward them, because we must affirm our faith in these as the fundamental principles of international law upon which the new law of nations must be built. When almost every dispatch from the old world announces some new violation of international law, when even its votaries lose courage and fear the destruction of the system, it becomes us and it behooves us publicly as individuals and as an organized Institute to confess our faith in international law as a system of justice and as a branch of jurisprudence, and upon the principles of justice and in accordance with the methods of jurisprudence to contribute, as best we may, to the upbuilding of that law which must exist between nations.

In no uncertain measure, the future of international law is with the Americas. If a great English statesman could boast that he had called the new world into existence to redress the balance of the old, let it be our claim to remembrance that the Americas, rejecting the balance of power, shall redress the misfortunes of the old world, by incorporating in the law of nations those principles of justice which have produced and maintained law and order, peace and content wherever they have existed and whenever they have been applied.

The Society of Nations Needs and Therefore has a Law-Making Body in the Hague Peace Conference

I am well aware that international law will not grow of itself, and that, as within nations the legislature steps in and by statute accelerates the growth of custom, so in the society of nations there must be some organ which will quicken the development of international law.

We must not, however, confuse the nation with the society of nations. We must recognize that the very close union within national boundaries does not exist in the society of

nations, that, while persons living within the nation may create a legislature and invest it with the power to command, it is difficult if not impossible to create a legislature and invest it with power over nations regarding themselves as sovereign, independent and equal. But is it necessary that we should carry over into the international field the agencies and instrumentalities of national life without changing and fitting them to the conditions of the new environment? We may profit by the experience of nations, and if national agencies and instrumentalities have justified themselves on a small scale and within a modest domain, may we not hope that they will render like services upon a larger scale and within the international field? But, given the difference of conditions, we should expect a difference in the institutions. If it is feasible to create a legislature within the nation, to endow it with the powers of a superior power and to invest its will with the force of law, we should, recognizing the difference of conditions in the international field, expect that a conference instead of a legislature should meet; that in this conference the states should be represented upon a plane of equality; that its resolutions should not have the force of law, but that they should be recommendations of the Conference to the different states, to adopt and to ratify, and, in so doing, to make them law.

Fortunately, a wise and enlightened monarch had in 1898 the vision to call a conference which met at The Hague, to consider matters of importance to the world at large and to take action in the interest not of one power, but of all powers. This Conference met in 1899 in The Hague and is known as the First Hague Peace Conference. A second was called and met in 1907 in the same quiet and stately city. The first was composed of representatives from twenty-six states, the second of representatives from forty-four nations. The first sat from the middle of May until the end of July, the second from the middle of June until the middle of October, thereby demonstrating that not merely twenty-six, but that

forty-four nations could meet in conference, not only for the period of two months, but for the period of four months, not merely to consider matters of advantage to one power, but those of advantage to all nations of varying degrees of civilization. These conferences drafted conventions and declarations. They were signed by the representatives of the powers, and they were then transmitted to the participating nations by the Netherland Government, acting in behalf of the Conference. They have been ratified by the appropriate branches of the national governments and the ratifications have been deposited at The Hague. In fact, a law-making body has made its appearance in the society of nations, not in the form of a legislature, which imposes its will and prevails by physical force, but in the simpler guise of a conference, which recommends and prevails by the wisdom and reasonableness of its projects. This institution is fitted to the needs of the society of nations. If it should meet at stated periods, and be given a definite organization and a procedure acceptable to the participants, the society of nations would have its organ for the development of law, without which anarchy must prevail, as it prevails today, but with which justice would be extended and would prevail in the uttermost corners of the earth.

I dare not go into further details. I must content myself with this passing notice, but I have felt it to be my duty to point out that a law-making organ is in existence or may be brought into being, consistent with the sovereignty, independence and equality of the members of the society of nations. The nations have recognized their solidarity; they only need to give effect to its recognition.

The American Institute can not devote itself to a more important subject. The society of nations exists, based upon civilization and a recognition of the solidarity of civilized states. The society of nations must become conscious of its existence and must endow itself with the agencies and instrumentalities necessary for its preservation and for the preserva-

tion of each of its members, without sacrificing the sovereignty, the independence and the equality of any. The Hague Conference is the key to unlock these difficulties. I feel keenly that the Institute should first pronounce itself upon the fundamentals of international law and that it should next express itself as to the best means of developing international law through periodical conferences of the nations, meeting at stated intervals. I would suggest that at the second session of the Institute this matter be considered, and I shall take the liberty of presenting a project at this meeting which, without any claim to finality or of solving or indeed of meeting the difficulties, may nevertheless serve as the basis of discussion and as an incentive to other and better projects.

The Society of Nations Needs a Court and Therefore it Will Have One to Ascertain and to Apply the Principles of Justice to Disputes Among its Members.

Admitting, as indeed we must admit, that there is a society of nations, that this society, like each and every other society, must have its law, that it must have its agency for the development of its law, I desire in conclusion to offer some observations upon the necessity of having an agency to ascertain this law and to apply it to the disputes or differences which must arise in any society, and which from a sad and a secular experience we know occur in the society of nations and disturb its peace and quiet.

It would perhaps be too much to say that it is useless to have law if it be not applied, because its very existence suggests its application. But it rarely happens that any law is so clear and unmistakable as not to give rise to a difference of meaning and to require an authoritative interpretation, and we know from our own experience, that, when great interests are involved, we cling to the letter of the law, if it be in our favor, and that we invoke the spirit if the letter killeth. We can not safely be entrusted with the interpretation of a law involving our rights. It may be a sad commentary upon human

nature, but it is human nature and this being so we should admit it, recognize it, and provide against it. We can not escape human nature; we can not escape ourselves; we can not escape history. The laws of every society must be interpreted, if the rights and duties of its members are to be ascertained and enforced. Every state belonging to the society of nations recognizes this, for every state has courts to ascertain the law, to interpret it, and to apply it in the disputes which arise between its citizens or subjects. There is not a single state making pretense to civilization and progress in which such agencies are lacking, and yet the society of nations, the greatest and the most impressive of all, has no agency to ascertain its law, to interpret it, and to apply it to the disputes which must necessarily occur between them by virtue of their contact and which will become more numerous as the nations are more closely brought into contact.

Now, if we find certain principles of law to obtain universally we may consider them as fundamental. If we find the method of development of law to be by legislature in every country, we can consider this method fundamental; and if we find some agency for the ascertainment of a rule of law and its application to disputes that may arise between and among citizens and subjects of every country, we are justified in believing that such an agency is fundamental. We are met, therefore, in any examination of national organization, be it superficial or profound, with three great universal, fundamental facts: the fact of law, the fact of law-making bodies, and the fact of law-administering bodies; and, if we find these facts everywhere existing in the state or existing in every state, we are justified, indeed, we are driven inevitably to the conclusion that these facts are fundamental facts of political society; that they are requisite to the maintenance of political society, if they are not inherent in its nature, and that we would expect to find them, albeit perhaps in rudimentary form, in early society, indeed in any society aware of its existence and properly organized.

Let me quote, without again commenting upon it, a passage from Aristotle's politics—true when he wrote it, true today, true of all conceivable time: "A social instinct is implanted in all men by nature, and yet he who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with the arms of intelligence and with moral qualities which he may use for the worst ends. Wherefore, if he have not virtue, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society."

Admitting that the administration of justice is the principle or order in political society, we must have agencies for its administration. But, in the first place, we must needs determine what is just. Now, our daily experience must have convinced us that high-minded and honest men, although they may agree in general as to what is just in the abstract, differ as to what is just in the concrete case, especially if they be personally affected by the case. A community can not be torn asunder. It must act as a unit, and it can only do so if it has ideas in common, that is to say, if fundamental ideas are held and shared in common. What the community needs is, not that the ideas of a select few shall prevail, but that there shall be a general agreement concerning these matters. We may admit that the ideas of enlightened men concerning justice are preferable to those of the unlettered, although this question is by no means free from doubt and history has much to say in favor of the many as against the few. The conception of justice to prevail in the community must be the ideas of justice held by people generally in the community if these ideas of justice are to prevail. Instead of the individual sense, which made itself known and was rejected in self-

redress, we have the community sense of justice. This community sense, although it may not be so high and so theoretically perfect as the sense of the enlightened few, sets the standard and the test of conduct within the community, and as the standard of the many it has the better chance of being obeyed.

Whenever it is necessary, society determines for itself and prescribes for all what is just by statute, instead of leaving it to slow-footed custom. And not content to determine and to prescribe what is just, when the need arises, it determines and prescribes it in advance, so that it may be known of all men, so that it may not seem to be the result of a particular case in which the disputants are interested, so that it may be justice alike in the abstract and in the concrete case.

Although justice is general, we may expect the rules of justice to vary from time to time, because a rule of conduct is often a matter of expediency. Justice as such is a matter of right and the progress of mankind consists in the transfer of justice from the abstract to the concrete through rules of law. But the experience of mankind shows that two agencies are needed in this matter: one agency to determine what is just in general and to make rules of law in accordance with the conception of justice obtaining in the community; and another agency to determine what is just in the particular case, that is to say, to pick out, or by analogy to frame in accordance with general principles, the rule applicable to the concrete case. One body is the legislature, the other is the court.

If justice is the bond of men in states, if the administration of justice is the determination of what is just, and if justice is the principle of order in political society, it behooves us to strengthen the bond between men by increasing their sense of and belief in justice, and by the greatest possible care to introduce the greatest possible order in political society through its administration.

The claim of the individual to determine his rights for

himself, to do justice in matters pertaining to himself, has been utterly rejected as inconsistent with order in society; and in every community, large or small, populous or sparsely settled, the community determines by an agency of its own what is right or wrong in the particular case, allowing the disputant to be heard, but not permitting him to take part in the decision. Can we suppose that justice is any less the bond between states, made up of men bound together by justice, and that the administration of justice between states, which is the determination of what is just, can be any the less the principle of order in this larger political society which we call the society of nations? If we are of this opinion, and it is hard to see how we can fail to share it, we must seek to endow the society of nations with that organ or those organs for the determination and the administration of justice, whether the dispute be between the United States and Japan, Great Britain and France, Austria-Hungary and Serbia. We know only too well that the failure to administer justice, resulting in the failure to determine what is just, is and has been the cause of disorder in political society; and, if it be maintained that there has not been justice between states or enough conscious justice to determine whether or not it be the bond between states as between men, and that it is the principle of order between states as between men within one political society, we certainly have had experience enough to know that the absence of justice between states and within the society of nations is the cause of disorder. Would we not better appeal from Philip drunk to Philip sober, or, more elegantly but hardly less forcibly expressed, should we not turn our backs upon these self-constituted sufficiencies the hereditary monarchs, and appeal to Aristotle, who still rules in his own right, not only in one country, but in every country, and not only in one time, but in all time.

My purpose is not at present to advocate an international court of justice, but to show that such a court is inevitable if a society of nations is to exist and if justice is to be

administered; because courts determine what is just in the concrete case and in so doing maintain order in political society, and, because we can not have a law of nations unless there is some agency or means or method created by the society of nations to determine what is just in a particular case, and in such a way as to bind all the members of the society by its decision. There must be some power in international society to determine this for itself, just as the smaller political community determines it, without leaving it to the nations in dispute, any more than a decision is left to the individuals in controversy. The society of nations must become conscious of its existence and of its duties. It must have its representative body to develop the law needed to maintain order among its members, and it must have an agency to interpret and to apply this law in appropriate cases.

The Three Difficulties Which Are Said to Stand in the Way of Creating a Court for the Society of Nations

A great and distinguished friend of mine says that there are three "lions" in the way of the establishment of an international court of justice. The first is the absence of law which the court is to administer; the second is the difficulty of getting the nations before the court, and the third is the difficulty of securing compliance with the judgment when it has been rendered. There are other difficulties, such as a proper and acceptable method of appointing the judges of an international tribunal; but, if the society of nations is conscious of its existence, and if its existence is recognized by each of the members forming it, and, if the solidarity of the civilized nations be a fact, as recognized by the First and Second Hague Peace Conferences, the difficulties in the way of the court may be overcome. The one great obstacle, in my opinion, is the apparent lack of desire on the part of the nations for such a court as shall be the organ of the society and by its decisions bind every member. If the nations really wish such a court, it can easily be created, and the best way to generate a will

or a desire is in my opinion not to denounce the nations, as is so frequently done, but to show the existence of the society of nations; to make clear the need of a law of this society and the necessity of a court to ascertain this law and to administer it. Indeed, in my opinion, there is but one difficulty and that is the failure on the part of the nations to appreciate to the full the existence of the society of nations; because if a society exists, and the states admit that it does, it is inevitable that this society should have law and that it should have an organ for its administration.

But let me take up these three difficulties in the way of the court. The first is said to be the absence of law. Now, of course, this is a weighty and a serious reason, because a court administers law, and if law does not exist it must make the law that it is to administer. It is, however, the function of a legislature, not of a court, to make law, although the latter may and does develop the law by its decisions. But do we lack law or do we lack it to the extent suggested in the objection? I believe not. The law of nations is no doubt an imperfect and an inadequate system, but it exists. It may be made more perfect and it may be made adequate to the needs of nations, if it be the desire of the nations so to do, or rather if the nations are convinced that order in political societies depends, as Aristotle asserts, upon the administration of justice. If I am right in supposing that half a dozen principles of municipal law can be considered as the foundation of law, international as well as national; that these principles may be translated into terms of international law and extended as it were beyond the frontiers of the nations into the international domain, the society of nations would have a law as clear and as capable of development as the law of any one of the states belonging to the society of nations. It was to meet and to overcome this first great objection that I have laid such stress upon the necessity of a law for the society of nations, and as a contribution to this subject I shall, as I have already said, submit to the Institute at a subsequent meeting, the

bases of the law of nations. But, supposing that the law does not exist, are we to allow ourselves to be discouraged because of this? Are we not, rather, to take steps to bring it into existence? As a partial answer to the contention that the law to be administered by an international court does not exist, I would call your attention to the fact that, although the United States has never codified international law or issued a system of international law as such, there have been decided by the Supreme Court of the United States some 2,800 cases turning upon a principle of international law or in which international law has been involved. This court, which is really international, as it is the agent of forty-eight states claiming to be sovereign, independent and equal in the matter of justice between and among themselves, has apparently not been impressed by the objection that the law did not exist which it was to apply and has seemingly had no great difficulty in ascertaining its principles. Indeed, the fundamental principles of international law which I have laid before you are based upon the fundamental principles of municipal law, and have been stated by the Supreme Court of the United States in judgments which are the best evidence of the existence of international law and of its claim to be considered a branch of jurisprudence. But, leaving out of consideration the judicial decisions of national courts, which, however, exist in every country and deal with questions of international law, an organ already exists which can make and develop the law for the society of nations, according to the desire of the nations themselves. I refer to the Hague Peace Conferences and, without dwelling upon their importance in this place, as I have previously mentioned it, I deem it only necessary to say that even a cursory examination of their work shows that they are none the less law-making, although they may only modestly claim to be law-recommending bodies.

It thus appears that the nations can frame law to be administered by the court, if the law be a prerequisite to the creation of the court, supposing, of course, that the nations

are really convinced of the advisability of its establishment and agree to take the steps necessary to call it into being.

The next lion in the way is to get the nations to submit their disputes to the court. The way to do this is by an agreement in the form of a treaty or convention, but this is only the formal not the real difficulty, because there is a widespread fear that the nations may not live up to their agreement to submit disputes. The question thus arises, how can nations that have agreed to resort to the court be compelled to do so? Back of that are the questions whether you can compel nations to live up to their agreements, or whether nations will agree to a treaty or convention allowing force to be used against them in order to compel the submission of disputes of the very kind which they have pledged themselves to lay before the court. Many people whose judgment I respect believe it possible to negotiate an agreement permitting the parties to it to use their forces, as William Penn would say, "united as one strength," to compel the submission of disputes in accordance with the treaty or convention, and indeed to secure by the same means, if necessary, the execution of the judgments of the court if they are not complied with. Personally, I can not bring myself to this point of view, for, however much we may question it, we must rely in the end upon the good faith of nations and, I believe, it is only public opinion which can quicken that faith into action.

The Good Faith of Nations Is Sufficient to Carry Out Their Agreements Under the Pressure of an Enlightened Public Opinion.

Without going into details, I would say that if the nations should agree to submit their justiciable disputes to the court of the society of nations and if, doubting compliance with the pledged word, nations should either conclude a separate agreement or insert in the original treaty or convention a provision for uniting their forces to compel recalcitrant members to lay the dispute of a justiciable nature before the court in ac-

cordance with the agreement, we must perforce rely upon the good faith of the nations to live up to their agreement to use force against the recalcitrants. And, even if some few nations should guarantee the execution of the agreement, pledging themselves to combine their forces and either to compel the recalcitrants to submit the case, or to compel the nations parties to the agreement to unite their forces against the recalcitrants, we should have to rely upon the good faith of the few nations to use their forces for this purpose. If we must therefore in the last resort rely upon the good faith of the nations, it seems to me that we should rely upon it in the beginning and not tend to render it ineffective by appearing to doubt it. The same observations apply equally to an agreement to secure by force, if necessary, the execution of a judgment. Therefore, as we must, whether we will or not, rely upon the good faith of nations, it is surely incumbent upon us to refrain from questioning it, and to use every means at our disposal to strengthen a belief in good faith and by so doing to strengthen good faith itself.

The Supreme Court of the United States Is in Form and Procedure the Prototype of the Court for the Society of Nations.

If public opinion is, as I believe, the only force which can be counted upon to compel nations to carry out their promises, we must endeavor to educate public opinion in every country so that the resultant international opinion will be enlightened as well as irresistible. But, fortunately, we do not need to labor this question. The Supreme Court of the United States, which many advocates of an international court of justice regard as the prototype of such an institution, has had an experience of a hundred years and more in settling disputes between states, which, for the purpose of justice, consider themselves as sovereign, independent and equal, and in the course of the century and more of its existence, the Supreme Court has devised a method of procedure which, satisfying the forty-

eight sovereign, independent and equal states of the American judicial Union, may at least serve as a basis of procedure likely to be acceptable to the forty-odd states composing the society of nations. As I intend to lay a project of an international judiciary before the Institute at a later meeting, it is perhaps unwise to enter into details at this time. I would like to call your attention to the fact that the Constitution of the United States, which creates what may be called, for present purposes, a judicial union, provides that state may sue state in the Supreme Court of the United States. And I would like to lay before you some observations of a general kind upon the practice of the Supreme Court considered in fact if not in theory as an international tribunal.

It is inherent in the nature of a court to determine its competence, and, as the states have agreed to sue one another in questions concerning law and equity, it is necessary for the court before taking jurisdiction to satisfy itself that the suit is between states and that it involves a principle of law or of equity. In other words, the court determines whether the parties have a right to appear before the court, that is to say, whether it has jurisdiction of the parties and whether it has jurisdiction of the case; whether the dispute is justiciable, whether it involves law or equity.

A doubt having arisen as to the right of the mixed commission, organized under Article VII of the Jay Treaty of 1794 between Great Britain and the United States, to determine its jurisdiction, the matter was referred to Lord Loughborough, then Lord Chancellor of England, who replied "that the doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd; and that they must necessarily decide upon cases being within, or without, their competency."[1]

In a very carefully considered and long-drawn-out boundary dispute between Rhode Island and Massachusetts, two states of the American judicial union, the Supreme Court considered at length and in great detail the nature of a justiciable ques-

[1] Moore's International Arbitrations, Vol. I, p. 327.

tion, and the difference between it and a political one.[1] From time to time the Court has found itself obliged to reconsider this question, which it has likewise treated as a julicial one. It may therefore be said that as far as the United States is concerned the distinction between a justiciable question and a political one has been clearly determined in judicial proceedings. There seems to be no valid reason why an international court composed of judges as eminent as those who have adorned the Supreme bench of the United States could not be trusted to determine what is or is not a justiciable question, and to refuse, as does the Supreme Court of the United States, to take jurisdiction in political questions.

But to return to the "lion" which bars the way. How is a state which has agreed to submit its justiciable questions to a court to be compelled to live up to its agreement? The experience of the Supreme Court in this matter is enlightening. In the case of *New Jersey* v. *New York*,[2] decided in 1830, the Supreme Court stated that it would, upon the request of the plaintiff state, direct that a subpoena be issued out of the Court against the state of New York and served upon the Governor and Attorney General of the state, commanding them to appear within the space of sixty days. The subpoena was issued. It was served upon the Governor and the Attorney General of the state, and yet the state did not make its appearance by its appropriate agent. In these circumstances, the Court decided that the state of New Jersey could proceed *ex parte* in the absence of the defendant and that a judgment would be entered against the state of New York by default.[3] Also the Court held in the case of *Massachusetts* v. *Rhode Island* that if a defendant state had appeared, it might withdraw its appearance. Indeed, it further stated that "no coercive measure will be taken to compel appearance."[4] As the result of these proceedings we have it laid

[1] 12 Peters' Reports, 657.
[2] 3 Peters' Reports, 461.
[3] 5 Peters' Reports, 284.
[4] 12 Peters' Reports, 755.

down that a state may sue another state of the American Union; that the defendant will be summoned, if the suit between the two states is of a justiciable nature; that the appearance of the defendant is left to its good faith acting under the spur of public opinion, for the Court expressly declares that coercive measures to compel the appearance of the state will not be used.

In like manner, the Supreme Court has held that there is no power on the part of the United States to compel by force the execution of any judgment of the Supreme Court against a state, saying, in the leading case of *Kentucky* v. *Dennison:* "If the Governor of Ohio refuses to discharge this duty [of surrendering a fugitive from justice in accordance with the provision of the Constitution and a law of Congress] there is no power delegated to the general Government, either through the Judicial Department or any other department, to use any coercive means to compel him."[1]

It may also be mentioned in this connection that the Supreme Court modifies in suits between states the procedure that would otherwise be employed in suits between individuals in such a way as to permit the defendant state to present its defense, while safeguarding the right of the plaintiff state to lay its full case before the Court, so that the dispute may be considered and be decided upon its merits.[2] From these simple statements, does it not appear that we have here a prototype of an international court and of its procedure? The nations can form a judicial union, just as they have formed many public unions, notably the Postal Union, to which not only all independent states but self-governing colonies are parties. They may agree that their disputes of a justiciable nature shall be submitted to and decided by the court of the judicial union, which, like its American prototype, will determine before taking jurisdiction that the case is one between state and state parties to the union; that the dispute, as presented is justiciable; that the defendant state is to be invited to appear, not to be

[1] 24 Howard's Reports, 66, 109–10.

[2] Rhode Island v. Massachusetts, 14 Peters' Reports, 210.

compelled by force to litigate the dispute; that, in the absence of the defendant state, the plaintiff state may present its case and if it be supported by evidence and be justified in law a judgment will be rendered, even in the absence of the defendant, but that compliance with the judgment, like the appearance of the defendant, depends upon the good faith of the states. There is no superior in the society of nations and an agreement creating an international court of justice for the decision of their justiciable disputes simply creates an agency for the purposes of justice, but does not make of the court a superior, with power to compel appearance and with power to enforce obedience to its judgments. The experience of the Supreme Court shows that good faith alone, acting under the pressure of public opinion is sufficient. Is not the good faith of nations to be trusted, as we trust the good faith of the states of the American Union, and is not the public opinion of the society of nations likely to be as powerful, if not more powerful than the public opinion of one of them?

The Court of the Society of Nations Must, as in the American System, Determine the Lawfulness of the Acts of the Society and of Its Members.

Before concluding, for I am painfully conscious that I have taxed your patience well nigh to the breaking point, let me refer again to the function of a court of law, which seems so elemental to us of the northern republic that we are in danger of overlooking it or of not attaching to it sufficient importance.

I have frequently said, indeed I have constantly, consciously and repeatedly said, that the American conception of the state is that of a body politic created by the people for their safety and happiness, with a form of government calculated to secure to the people the enjoyment of their inalienable rights, among which are life, liberty, and the pursuit of happiness. The conception of the state as a body politic carries with it as a corollary that the body politic is a creature of the people and organized by them for certain specific purposes,

as is and must be a corporation; that the state as such can neither have nor exercise rights which are not granted or allowed to it by the people, and that the government created by the people is invested with certain rights and with certain duties in order to fulfil the purpose for which it, as well as the state was created, namely, to contribute to the safety and happiness of the people. This means to an American that the state itself is subordinated to law because it can only do that which it has been authorized by law to do; that the government is likewise subordinated to law; and that all the acts of both are tested by law. If they are found to be within the grant of power, the acts are valid. If they are found to be in excess of the grant, they are invalid.

The government does not and the officers of the government interested in the exercise of power do not pass upon these questions. In the American system, the judiciary sits in judgment upon the acts of the highest officers, letting them stand if there is a warrant for them in law, quashing them if they are contrary to law. In the American system the legislature is a body invested with certain rights and denied others. If an act thereof is within the grant of power, it is valid; if it be in excess of the grant, it is invalid. But, as in the case of the government, neither the legislature nor the members thereof pass upon the validity of their acts; the court of justice determines whether the act is or is not in accordance with the grant. Finally, in the American system, the rights and duties of the Executive Department, the rights and duties of the Legislative Department, and the functions of the Judiciary are stated and defined in the constitution, which reserves to the people the rights which have not been specifically granted away.

Law has always been looked upon in the English-speaking colonies as the bulwark of their rights and of their liberties. The colonists had to know exactly the nature and extent of their charters in order that they might not be deprived of their rights. In the contest between the body politic or corpora-

tion called the colony or province, and the larger corporation known as England, the necessity of understanding the sphere rightfully claimed and exercised by each, made knowledge of the law essential. An act of the colony in excess of its grant was set aside. It was natural, therefore, that the new states, familiar with this process, should invest their courts with the faculty of testing the rightful exercise of power by the United States, by any department of the government, or by the state as against the government, or by the legislature within the state. The United States was the first country in the world to have the acts of the government and of the congress passed upon by the courts, to be set aside if inconsistent with the constitutional grant of power. The American system is indeed a government of laws, not of men, and the distinguished American publicist, the Honorable Simeon E. Baldwin, whose authority I have invoked on a previous occasion, finely summed up the effect of the separation of the colonies from Great Britain when he said: "Loyalty to law took the place of loyalty to king."

The acceptance of the American conception of the state requires the acceptance of the American doctrine that the acts of the state, irrespective of the official character of the person who has commited the acts, shall be subordinate, not superior, to the constitution, and that the validity of these acts shall be tested by a court of justice applying the fundamental law of the constitution to the act called in question. For, as the distinguished diplomat, jurist and statesman, the late Edward J. Phelps, has truly and happily said:

> American experience has made it an axiom in political science that no written constitution of government can hope to stand without a paramount and independent tribunal to determine its construction and to enforce its precepts in the last resort. This is the great and foremost duty cast by the Constitution, for the sake of the Constitution, upon the Supreme Court of the United States.[1]

[1]Orations and Essays of Edward John Phelps, 1901, pp. 58–59.

Coöperation not Federation of Nations Is the World's Need

Are we to rest content with the loose and ill-defined union which we call the society of nations, or are we to create by conscious effort a federated state? Instead of perfecting what we have, are we to create something differing in kind as well as in degree? Many people advocate a world state, that is, they look upon the states of the world as merged into a federal state or as forming parts of a universal state. But it seems to me doubtful whether such a state be possible and if possible whether it is desirable. In any event, its creation seems to be so remote, depending as it does upon the conscious renunciation of independence, although equality is maintained, that we may be pardoned if we content ourselves at least for the present with more modest proposals.

We can not hope to realize our ambitions at a bound. Progress is not by revolution, but through a continuous, successive series of small changes. From earliest childhood we are familiar with this truth, but it is to be feared that when we grow up we do indeed put away childish things and forget the lines, as applicable to the world at large as they are to the nursery, concerning "little drops of water and little grains of sand." We must be content to make haste slowly, if the work of our hands is to stand the test of our successors and if it is to be in itself a round in the ladder of progress. We should, I think, insist upon coöperation or common action toward a common end, the end being the common good of nations. We must frankly recognize the existence of the society of nations, composed of nations equal and independent; that these nations are united as the Hague Conferences have said by solidarity, and that every action taken be measured in terms of the general interest.

The question arises, how can these nations best coöperate? Put in this form, the question answers itself, for they can not in a common interest very well work apart. I think and I have long thought that we should consciously try to do on

a large scale what has been done well and successfully on a small scale, in the hope that each step forward will be an incentive to a further step, and that little by little the problem will solve itself. We should not relax our efforts if what we accomplish does not seem to advance the cause or fit appreciably into the general scheme of things. Logic has its place in the schools, but history is not necessarily logical. Political science is a thing of practice and of experience. The test is not whether a thing is logically perfect, but whether it works well, whether it accomplishes the purpose for which it was created. When sufficient progress has been made, we can then see whither we are tending and perhaps discover a general principle by the aid of which we may accelerate the rate of progress. Very often the little things lay down the great principle. Very often private initiative points the way to official action. This slow, tentative, hesitating, experimental method is, I think, more necessary in international than in national relations, because nations are fearful, and properly so, lest they take a false step. If an individual makes a mistake, he may undo its consequences, but a nation may by a false step jeopardize its existence, or by entering into an untried agreement it may sacrifice or seem to sacrifice its independence.

The Universal Postal Union Is the Type of a Coöperative Union

In the past fifty or sixty years we have had experience with the so-called international unions, some of which are of a private, others of a public, nature. Each union deals with a specific subject, and the possibility of the union has been tested by results. The nations taking part in the creation of the union did so because they felt that the union might do good and, as they were free to withdraw, they felt they could safely be parties to its creation and in its operation. Take as an example the Universal Postal Union, to which all independent nations and to which also self-governing colonies are signatories. This union was formed in 1874, upon the initiative of Germany,

and the revised convention today in force was signed at Rome on May 26, 1906. The fact that self-governing colonies or dominions are members means and can only mean that sovereignty is not involved, because if it were, self-governing but not sovereign communities conld not be members.

The fact is, something needed to be done and each state and self-governing community had an interest in having it done. It was natural that what concerned all should be done by all, that the nations should come together, that they should coöperate, that they should take common action for a common purpose toward a common goal, namely, the transmission of postal correspondence to, from and through each of them.

They felt that differences of opinion might arise and they appreciated the advantage of settling these differences by peaceful means. They therefore provided in Article 43 that any differences of opinion or disputes arising between postal administrations, or that any differences of opinion as to the interpretation of the convention should be submitted to arbitration, each disputant appointing an arbiter and the two selecting an umpire. It was evident to the partisans of this union that the nations should meet regularly at stated times to revise the convention, and this has been done. It was foreseen that the successful operation of the union would require administrative machinery. Therefore, a permanent office of the union was created at Berne. All this seems simple enough. It has come about so naturally and so quietly that we hardly take note of its existence; yet this Universal Postal Convention not only points the way, but is the way to international organization, because it creates a union of the nations having a common interest in postal matters.

It provides for a periodic meeting of representatives of the contracting powers to legislate in postal matters. From this standpoint, it may be called a legislative union, although restricted to matters of postal correspondence.

It also provides a method of settling differences of opinion and disputes between and among its members and for the

authoritative interpretation of the convention. In this aspect, it is a judicial union.

It further provides for a central office to look after the interests of the union, and to see that its provisions are carried out. In this respect it is an administrative union in postal matters.

I could illustrate the same process of development by citing other public unions, likewise of a special kind, but the Postal Union is sufficient for present purposes. May we not properly ask whether the time will not come, if it is not already at hand, to consolidate these different unions, with the result that we shall have for many purposes a legislative union, a judicial union and an administrative union from those which already exist?

My purpose, however, is not at present to enter further into details, but to show how easy it would be for the nations to tread, as it were, in their own footsteps and to organize a union differing in degree rather than in kind from those which already exist. It is pertinent, however, to ask ourselves, is it necessary to organize a union? Does not the union which we have in mind already exist, although we do not seem to be conscious, as we ought to be, of its existence? The society of nations is a union, however loose and indefinite it may be when compared with the conscious, definite, restricted postal union. The Hague Conference, meeting at stated periods, would be a legislature, not in the national but in the international sense, which is another way of saying that it is a diplomatic body which does not enact laws, but which recommends treaties and conventions for the ratification of the nations taking part in its proceedings. If it has been found possible for the nations to agree to settle by arbitration disputes arising under the postal convention, including its interpretation or application, can not these same nations agree to constitute in advance of the dispute an arbitral or a judicial body for the trial and disposition of disputes when and as they arise? When this is done, the society of nations will have a judicial union. The first step towards

it, and that a very long one, was taken in 1899 at the First Hague Conference, by the creation of the so-called Permanent Court of Arbitration. The administrative council at The Hague, composed as it is of the nations accredited to the Netherlands, could act either as a body or through committees as the administrative organ of the society.

Suarez on the Society and Law of Nations

A great and a learned Spaniard, one Suarez by name, thus stated in classic terms in the early days of the seventeenth century the need of a society of nations and of a law to regulate the conduct of its members:

> The human race, however divided into various peoples and kingdoms, has always not only its unity as a species but also a certain moral and quasi-political unity, pointed out by the natural precept of mutual love and pity which extends to all, even to foreigners of any nation. Wherefore although every perfect state, whether a republic or a kingdom, is in itself a perfect community composed of its own members, still each such state, viewed in relation to the human race, is in some measure a member of that universal unity. For those communities are never singly so self-sufficing but that they stand in need of some mutual aid, society and communion, sometimes for the improvement of their condition and their greater commodity, but sometimes also for their moral necessity and need, as appears by experience. For that reason they are in need of some law by which they may be directed and rightly ordered in that kind of communion and society. And although this is to a great extent supplied by natural reason, yet it is not so supplied sufficiently and immediately for all purposes, and therefore it has been possible for particular laws to be introduced by the practice (*usu*) of those same nations. For just as custom (*consuetudo*) introduces law in a state or province, so it was possible for laws to be introduced in the whole human race by the habitual conduct (*moribus*) of nations. And that all the more because the points which belong to this law are few and approach very nearly to natural law, and

> being easily deduced from it are useful and agreeable to nature, so that although this law can not be plainly deduced as being altogether necessary in itself to laudable conduct (*ad honestatem morum*), still it is very suitable to nature and such as all may accept for its own sake.[1]

We look upon recent events, such as the Hague Conferences, as establishing this union, whereas in fact it existed, and must have existed, from the very moment that intercourse of independent states was permitted, because recognized as a necessity. The First Hague Conference of 1899 brought this simple truth home to the most bourgeois among us, and indeed our state of mind at the present day is largely comparable to that of Monsieur Jourdain, when he learned that he had been writing prose:

Monsieur Jourdain. Now let me tell you something in confidence. I am in love with a lady of high rank and I want you to help me to write her a little note which I intend to drop at her feet.
Professor of Philosophy. Certainly.
Monsieur Jourdain. That would be a gallant thing to do; wouldn't it?
Professor of Philosophy. Undoubtedly. Do you want to write it in verse?
Monsieur Jourdain. No, no, not verse.
Professor of Philosophy. You prefer mere prose?
Monsieur Jourdain. No, I don't want either prose or verse.
Professor of Philosophy. But you must have one or the other.
Monsieur Jourdain. Why?
Professor of Philosophy. Because, monsieur, there is no way to express ourselves except in prose or verse.
Monsieur Jourdain. Is there nothing but prose and verse?
Professor of Philosophy. Nothing, monsieur. All that is not prose is verse; all that is not verse is prose.
Monsieur Jourdain. When we talk, what's that?
Professor of Philosophy. Prose.

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[1]Tractatus de Legibus et Deo Legislatore, 2, 19, 9 (1611); translated in The Collected Papers of John Westlake on Public International Law, 1914, p. 27.

Monsieur Jourdain. What! when I say, "Nicole, bring me my slippers and give me my night-cap," is that prose?
Professor of Philosophy. Yes, monsieur.
Monsieur Jourdain. Good Heavens! I've been talking prose these forty years and never knew it. I am certainly very much obliged to you for teaching me that.[1]

I have dwelt at considerable length upon these matters, because the burning question at the present day is the organization of the society of nations in such a way as to secure the administration of justice between the states which will assuredly prove to be the principle of order in this larger political society as it has proved itself to be such in the smaller political society with which we are more familiar. I have tried to show that the society of nations exists; that if it exists it must have a law; that if it has a law it must have some authoritative agent to interpret this law and to apply it to the disputes which must needs arise between the members of the society.

That the American Institute, composed of an equal number of representative publicists from each national society created in every one of the twenty-one American republics shall bring to bear upon the world the fact that a society of nations exists; that there is a solidarity among its members; that a law is needed to regulate the conduct of each nation toward all others within the society, and that there must be an agency to develop and to create this law, as well as an agency to ascertain it and to apply it to the disputes whenever they shall arise between nations, is the hope not only of its founders, of the national societies with which it will coöperate, of all right-minded men, but also of all men of good will, for the peace which is the perfected fruit of justice is the promise of the Gospel only to men of good will.

[1]Molière: Le Bourgeois Gentilhomme, Act II, Scene iv.

REMARKS ON INTRODUCING THE DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS, JANUARY 6, 1916.

GENTLEMEN:

It is my very great pleasure, in pursuance of a promise made in a previous session, to lay before you a project which, if it should meet with your approval, will, I venture to hope, supply a firm and secure foundation upon which the temple of American justice can safely rest. It is a very ambitious project, and I therefore submit it to your consideration with no little misgiving.

At a time when the very existence of international law is being questioned, it is incumbent upon us to examine with great care the fundamental principles upon which the law of nations must rest if there either is or is to be a system of justice between nations, to ascertain and to state those principles, and to bring them home to every man of light and leading in the continent. It is our duty as well as our privilege to devise a method not merely for the dissemination of a knowledge and an understanding of them but a method of developing them in such a way that rules, based upon these fundamental principles, shall be formulated in order that there may be a standard of conduct common to the American Republics, based upon a system of justice not only common to them but deeply imbedded in the life and thought of their citizens, in the full consciousness that the principles of justice and the rules of conduct acceptable to the American Republics are capable of a universal application.

It has seemed to me that no great good would come from a discussion of the rules of conduct in isolated cases and that, even with the greatest good will in the world and although armed with industry and devotion, we could do little in this way and in this first session calculated to improve or to ad-

vance the law of nations. The different projects which have been proposed for study and investigation are indeed admirable, but to make progress upon an uncharted sea we must be sure of the point of departure and the goal which we would reach. Let me reënforce these views by the language of a great American statesman, particularly applicable to the storm and stress in which we exist rather than live, and let me express the hope that his words of wisdom may be as a glass to the eye and as a lamp to our feet. In the very first words of his reply to Hayne, Daniel Webster said:

> When the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are.[1]

In justification of the large part which duty plays in the project which I am about to lay before you, let me quote the language of another great statesman of my country, whose reputation is not confined to the United States and whose name is as a household word in the American Republics. On opening the Conference of Teachers of International Law in the City of Washington in 1914, Mr. Elihu Root said:

> I think no one can study the movement of the times without realizing the democracy of the world—for it is not alone in this country—is realizing its rights in advance of a realization of its duties. And that way lies disaster, that way lies hideous wrong, that way lies the exercise of the mighty powers of modern democracies to destroy themselves, to destroy the vitality of the princi-

[1] Whipple's "Great Speeches and Orations of Daniel Webster," 1879, p. 227.

> ples upon which they depend. . . . Unless the popular will responds to the instructed and competent leadership of opinion upon the vital question of our foreign relations, the worst impulses of democracy will control. At the bottom of wise and just action lies an understanding of national rights and national duties. Half the wars of history have come because of mistaken opinions as to national rights and national obligations, have come from the unthinking assumption that all the right is on the side of one's own country, all the duty on the side of some other country [1]

Gentlemen, I ask your consideration of a proposed Declaration of the Rights and Duties of Nations, preceded by a preamble and followed by a commentary.

[1] Root's Addresses on International Subjects, 1916, pp. 127–8.

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS adopted by the American Institute of International Law at its first session in the City of Washington, January 6, 1916

WHEREAS the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

WHEREAS these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

WHEREAS, according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

WHEREAS the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

WHEREAS we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the states forming the Society of Nations; and

WHEREAS these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

WHEREAS the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual Interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations;

THEREFORE, THE AMERICAN INSTITUTE OF INTERNATIONAL LAW, at its first session, held in the City of Washington, in the United States of America, on the sixth day of January, 1916, adopts the following six articles, together with the commentary thereon, to be known as its

Declaration of the Rights and Duties of Nations

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

Official Commentary upon the Declaration of the Rights and Duties of Nations, adopted January 6, 1916.

I. **Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.**

This right is to be understood in the sense in which the right to life is understood in national law, according to which it is unlawful for a human being to take human life, unless it be necessary so to do in self-defense against an unlawful attack threatening the life of the party unlawfully attacked.

In the Chinese Exclusion Case (reported in 130 United States Reports, pp. 581, 606), decided by the Supreme Court of the United States in 1888, Mr. Justice Field said for the Court:

> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers.

The right of a state to exist and to protect and to conserve its existence is to be understood in the sense in which the right of an individual to his life was defined, interpreted and applied in terms applicable alike to nations and individuals

in the well known English case of *Regina vs. Dudley* (reported in 15 Cox's Criminal Cases, p. 624; 14 Queen's Bench Division, p. 273), decided by the Queen's Bench Division of the High Court of Justice in 1884, to the effect that it was unlawful for shipwrecked sailors to take the life of one of their number, in order to preserve their own lives, because it was unlawful according to the common law of England for an English subject to take human life, unless to defend himself against an unlawful attack of the assailant threatening the life of the party unlawfully attacked.

The right of a State to exist and to protect and to conserve its existence, as laid down by the Supreme Court of the United States, is recognized not merely in the United States but in Latin America, as appears from the views of the well-known publicists, Messrs. Bello and Calvo, who may be considered representative of Latin American thought and practice.

Thus Bello, writing in 1832, said:

> There is no doubt that every nation has the right of self-preservation and is entitled to take protective measures against any danger whatsoever; but this danger must be great, manifest and imminent, in order to make it lawful for us to exact by force that another nation alter its institutions for our benefit. (Andrés Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, VII.)

And Calvo, half a century later, said:

> One of the essential rights inherent in the sovereignty and the independence of States is that of self-preservation. This right is the first of all absolute or permanent rights and is the fundamental basis of a great number of accessory, secondary, or occasional rights. We may say that it constitutes the supreme law of nations, as well as the most imperative duty of citizens, and a society that fails to repel aggression from without neglects its moral duties toward its members and fails to live up to the very purpose of its institution. (Carlos Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. 1, § 208.)

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other state composing the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

The right to independence and its necessary corollary, equality, is to be understood in the sense in which it was defined in the following passage quoted from the decision of the great English admiralty judge, Sir William Scott, later Lord Stowell, in the case of *The Louis* (reported in 2 Dodson's Reports, pp. 210, 243-44), decided in 1817:

> Two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all states meet upon a footing of entire equality and independence, no one state, or any of its subjects, has a right to assume or exercise authority over the subjects of another.

The right of equality is also to be understood in the sense in which it was stated and illustrated by John Marshall, Chief Justice of the Supreme Court of the United States, who said,

in deciding the case of *The Antelope,* in 1825 (reported in 10 Wheaton's Reports, pp. 66, 122):

> In this commerce thus sanctioned by universal assent, every nation had an equal right to engage. How is this right to be lost? Each may renounce it for its own people; but can this renunciation affect others?
>
> No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all, by the consent of all, can be divested only by consent; and this [slave] trade, in which all have participated, must remain lawful to those who can not be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose governments have not forbidden it.

The right of equality is further to be understood in the sense in which it was expressed and illustrated by Mr. Elihu Root, in the following passage from the address which he delivered, when Secretary of State of the United States, and in the presence of the official delegates of the American Republics accredited to the Third Pan American Conference held at Rio de Janeiro on July 31, 1906:

> We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers that we do not freely concede to every American Republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of

> the true way to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth, that we may all become greater and stronger together.

It would seem that the measured judgments of Lord Stowell and of Chief Justice Marshall, not to speak of Mr. Root's opinion, given as Secretary of State, are sufficient to establish a principle of international law, and that it is unnecessary to cite other authorities, if the ones already quoted fail to produce conviction. In order to show, however, that independence and equality are the law of the American Continent, the authority of the two great Latin American publicists may be again invoked.

Thus, Bello says:

> From the independence and the sovereignty of nations it follows that no one nation is permitted to dictate to any other nation the form of government, of religion, or of administration that it must adopt, or to hold it accountable for the relations between its citizens or those between the government and its subjects. (Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, VII.)

> All men being equal, the groups of men composing universal society are equal. The weakest republic enjoys the same rights and is subject to the same duties as the mightiest empire. (Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, II.)

And to the same effect, but more at length, Calvo says:

> States possess, by virtue of the law of their organization and of their sovereignty, their own exclusive and particular sphere of action. In this respect, they depend upon no one and are bound to provide for the maintenance of those rights and for the observance of those duties alone which are the fundamental and necessary basis of every free society. Absolute sovereignty necessarily implies complete independence. Hence States, in so far as they are moral persons, have a fundamental right: the right of freely carrying out their destinies; and

a duty that is no less imperative: the duty of recognizing and of respecting the sovereign rights and the absolute independence of other States. (Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. I, § 107.)

The equality of sovereign States is a generally recognized principle of public law. It has the twofold consequence of giving all States the same rights and of imposing upon them the same mutual duties. The relative size of their territories cannot justify, in this regard, the slightest difference or the slightest distinction between nations considered as moral persons, and, from the point of view of international law, as well as from that of equity, what is lawful or unjust for one State is likewise lawful or unjust for all others. "Nothing can be done to a small or weak nation," said Mr. Sumner in the United States Senate on March 23, 1871, "that would not be done to a large or powerful nation, or that we would not allow to be done to ourselves." (Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. I, § 210.)

IV. **Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.**

This right is to be understood in the sense in which it was stated by Chief Justice Marshall in the following passage of his judgment in the case of the schooner *Exchange* (reported in 7 Cranch's Reports, pp. 116, 136-7), decided by the Supreme Court of the United States in the year 1812:

The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation, within its own territories, must

> be traced up to the consent of the nation itself. They can flow from no other legitimate source.
>
> This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory. The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereignties have consented to a relaxation, in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers. This consent may, in some instances, be tested by common usage, and by common opinion, growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world. . . .
>
> This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.

In view of the fulness of Chief Justice Marshall's exposition of this right and its consequences, and in view also of the acceptance of *The Exchange* as an authority in every civilized country, both as to the right and its limitation, it does not seem necessary to quote statements of Latin-American publicists, in order to sustain what may be called the obvious, and which is deeply imbedded in the legislation of the American Republics.

In lieu of many illustrations that might be drawn from the civil codes of the Latin-American States, one will suffice, namely, Article 14 of the civil code of Chile, which declares that,

the law is binding upon all the inhabitants of the Republic, including foreigners.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

This right is to be understood in the sense in which it was stated in the following passage from the judgment of Chief Justice Waite in the case of *United States vs. Arjona* (reported in 120 United States Reports, pp. 479, 487), decided by the Supreme Court of the United States in 1886, holding that as each nation had by international law the exclusive right to fix its standard of money, it was the duty of the United States as a member of the Society of Nations to protect the money of a foreign country, in this case Colombia, from forgery:

> But if the United States can require this of another, that other may require it of them, because international obligations are of necessity reciprocal in their nature. The right, if it exists at all, is given by the law of nations, and what is law for one is, under the same circumstances, law for the other. A right secured by the law of nations to a nation, or its people, is one the United States as the representatives of this nation are bound to protect.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

International law, then called the law of nations, was declared by judges and commentators before the Declaration of Independence of the United States to form an integral part of the common law of England, and by judges and commen-

tators of the United States as adopted at one and the same time with the adoption of the common law of which it formed an integral part. Thus, in the case of *Buvot v. Barbuit* (reported in Cases Tempore Talbot, p. 281), decided by Lord Chancellor Talbot in 1733, that distinguished judge and upright man is reported by Lord Mansfield, who was then the ornament of the bar and was counsel in the case, to have said:

> That the law of nations, in its full extent, was part of the law of England. That the act of Parliament was declaratory, and occasioned by a particular incident. That the law of nations was to be collected from the practice of different nations, and the authority of writers.

In the case of *Triquet v. Bath* (reported in 3 Burrow, p. 1478), decided by the Court of King's Bench in 1764, Lord Chief Justice Mansfield held, quoting the judgment of Lord Talbot in *Buvot v. Barbuit,* that the law of nations was part of the law of England; and three years later, in the leading case of *Heathfield v. Chilton* (reported in 4 Burrow, p. 2015), Lord Chief Justice Mansfield reiterated his opinion, stating that,

> the privileges of public ministers and their retinue depend upon the law of nations; which is part of the common law of England. And the act of Parliament of 7 Ann. c. 12 did not intend to alter, nor can alter the law of nations.

The distinguished commentator, Sir William Blackstone, who had been counsel in both these cases tried before Lord Mansfield, wrote in the first edition of the fourth volume of his Commentaries upon the Laws of England, published in 1769, that:

> The law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be a

> part of the law of the land. And those acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; without which it must cease to be a part of the civilized world.

In accordance with the views of English judges interpreting and applying the Common Law and in reliance upon the express language of the illustrious English commentator from whom they had learned their law, the Revolutionary statesmen of North America understood and stated that international law was a part of the law of the United States. Thus, Thomas Jefferson, Secretary of State under Washington's Administration, referred in the year 1793 to "the laws of the land, of which the law of nations makes an integral part." (American State Papers, Foreign Relations, Vol. 1, p. 150.) His great opponent, Alexander Hamilton, differing in most respects from Thomas Jefferson, nevertheless concurred in the view that international law was a part of the law of the land, and explained it more elaborately than Mr. Jefferson in the following passage quoted from the essays which Hamilton, under the pseudonym of Camillus, wrote for the Press in 1795 in defense of the Jay Treaty:

> A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.
>
> 1. The United States, when a member of the British Empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it.
>
> 2. The common law of England, which was and is in force in each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself.

3. Ever since we have been an independent nation, we have appealed to and acted upon the *modern* law of nations, as understood in Europe—various resolutions of Congress during our Revolution, the correspondence of executive officers, the decisions of our courts of admiralty, all recognize this standard.

4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality refers expressly to the *modern* law of nations, which must necessarily be understood as that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is indubitable, that the customary law of European nations is as a part of the common law, and, by adoption, that of the United States. (Lodge's "Works of Alexander Hamilton," 1885, Vol. V, pp. 89-90.)

A recent decision of the Supreme Court of the United States defines the relation of international law to the law of the land as it was stated by Sir William Blackstone in his Commentaries published before the American Revolution. Thus, in the case of *The Paquete Habana* (reported in 175 United States Reports, pp. 677, 700), decided in 1899, Mr. Justice Gray, delivering the opinion of the Court, said:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be but for trustworthy evidence of what the law really is.

It may be said in summing up the relation of international law to the common law of England and to the municipal law of the United States, that international law is part of the English common law; that as such it passed with the English colonies to America; that when, in consequence of successful rebellion, they were admitted to the society of nations, the new Republic recognized international law as completely as international law recognized the new Republic. Municipal law it was in England; municipal law it remained and is in the United States. Without expressing an opinion upon the vexed question whether it is law in the abstract, the courts, State and Federal, take judicial cognizance of its existence, and in appropriate cases enforce it, so that for the American student or practitioner international is domestic or municipal law.

The constitutions of certain Latin-American States expressly lay down the principle of Anglo-American law that international law is part of the law of the land. Thus, Article 106 of the constitution of the Dominican Republic and Article 125 of the constitution of Venezuela, which admits the principle with certain limitations. The constitution of Colombia of 1863 expressly declared that "The law of nations forms part of the national legislation," and an eminent American publicist specially versed in such matters states that "the authorities of the country are understood, in their treatment of neutrality and other questions, to have acknowledged the continuing force of the principle." In other constitutions of the American Republics the principle is not stated in express terms. It is, however, recognized implicitly or for specific cases; for example, Articles 31, 100, and 101 of the constitution of Argentina; Articles 59, 60, and 61 of the constitution of Brazil; Article 73 of the constitution of Chile; Article 107 of the constitution of Honduras; Article 96 of the constitution of Uruguay, etc., etc.

The laws of Latin-American countries—notably those relating to judicial procedure or to the organization of judicial

authority—recognize, expressly or implicitly, the principle in question. In all the American countries the rules of international law have been treated as in force in their proclamations of neutrality in the great European war.

In future it must be expressly admitted as the basis of the public law of the New World that international law is part of the national legislation of every country. This is not only a principle of justice but one that is necessary to facilitate and to strengthen the friendly relations of all States.

The following impressive language of an eminent citizen of the American continent, Daniel Webster, to be found in an official instruction written when he was Secretary of State of the United States of America, may be quoted as a statement in summary form of the rights and duties of nations, especially of the American Republics:

> Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

REMARKS AT THE CLOSING SESSION OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW, JANUARY 8, 1916.

There must, gentlemen, be an end to all things, and the time has come for the Institute to adjourn, but not to close, its labors. Indeed, I might rather say that the time has come, or will come with the adjournment, to begin the serious work which has drawn us together and which we hope will justify our existence. A few days ago, when we met for the first time, we came together as publicists from the different countries of America deeply interested in international law and impressed with the belief that direction could be properly given to our efforts by a central organization, such as the American Institute of International Law. We close our session today as members of an organization embracing the publicists of the American continent. We have defined the objects, the aims and the purposes of the Institute, and the means whereby they may be realized. We have considered the relations that should exist between the Institute on the one hand and the twenty-one national societies of international law on the other and have found them to consist in coöperation under a central direction. We have completed the election of members of the Institute by selecting in each instance the five publicists rcommended by the national societies for membership in the Institute. We have chosen the officers and we have agreed upon a method of procedure.

These facts would in themselves have justified the session, but we have done more than that. We have placed international law upon firm and larger foundations. We have adopted principles of justice which must and will regulate the relations of nations, if those relations are to be peaceful,

as they will assuredly be if based upon principles of justice. We have adopted a declaration of the rights and duties of nations, to which we have prefixed a preamble stating the reasons for the declaration and a commentary justifying each one of the articles. In so doing, we have confessed our faith in justice as the one great concern of nations, as it is the one great concern of people within national lines, and we have expressed within the compass of half a dozen articles the fundamental principles upon which a stately and adequate structure of international law can be raised.

But we do not intend to content ourselves with the adoption of this declaration. We must strive by all the influence which we possess to make it a reality and to make it the measure of right and wrong in the relations of the American Republics one with another. The declaration of the rights and duties of nations is peculiarly an American document. It speaks not alone of rights, but it couples them with duties, because in any just conception right and duty are correlative, coexistent and coextensive, and, where peoples of the past have been prone to assert their rights, we are bold enough to proclaim our duties. We believe in the substitution of law for force, and that in this western continent law should control the conduct of states as well as the actions of men.

We have therefore stated the rights and duties of nations, not in terms of philosophy or of ethics, but in terms of law, and we have supported and justified each of the six articles forming the declaration by an adjudged case of the Supreme Court of the United States, thus asserting that these principles are law, that they have been and therefore can be administered in courts of justice; and we furthermore express the hope and confess our faith in the fact that they will be considered as law by the American Republics, that they will be applied in their mutual relations and that they will be interpreted, defined and developed in courts of justice, as, in the last resort, courts of justice must pass upon the actions of nations just as they pass upon the actions of men. We have shown by the

adoption of the declaration that we believe in international law as a branch of jurisprudence, and the adoption of the declaration makes it possible to consider, to study, to expound and to develop it as such—a result which would indeed justify publicists in coming from all of the American Republics.

With the acceptance of the Declaration of the Rights and Duties of Nations the American Institute is in a position to take up and to consider in the light of fundamental principles of justice the various projects which have been submitted by its members during the session and especially the projects presented by the National Societies.

These will be referred to a commission in order that they may be examined as their importance deserves and, accompanied by a Report, they will be transmitted to the National Societies and laid before the next session of the Institute for such action as its members may, in their wisdom and in the fulness of knowledge, be minded to take.

In separating, we should have the consciousness that we have meant well and that we have done well. We have moreover the very great satisfaction of knowing that our acts have met with the approval not merely of the members who have taken part in the session but that they have excited the interest and expectation of the countries to which our members belong. For have we not been invited by the Government of Cuba during the course of this session to hold the next session of the Institute in the City of Havana as the guests of the nation? We have accepted this courteous invitation in the hope that we may prove to be not unworthy of the consideration shown us, and, in declaring the first session of the American Institute closed, I express the hope that we shall all meet in the City of Havana in the Republic of Cuba in the year 1917.

APPENDIX

Appendix

CONSTITUTION OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

ARTICLE I. *Name*

An association is founded to be known as the *American Institute of International Law.*

ARTICLE II. *Object*

The American Institute of International Law is an unofficial scientific association.

It proposes:

1. To give precision to the general principles of international law as they now exist, or to formulate new ones, in conformity with the solidarity which unites the members of the society of civilized nations, in order to strengthen these bonds and, especially, the bonds between the American peoples;

2. To study questions of international law, particularly questions of an American character, and to endeavor to solve them, either in conformity with generally accepted principles, or by extending and developing them, or by creating new principles adapted to the special needs of the American Continent;

3. To discover a method of codifying the general or special principles of international law, and to elaborate projects of codification on matters which lend themselves thereto;

4. To aid in bringing about the triumph of the principles of justice and of humanity which should govern the relations between peoples, considered as nations, through more extensive instruction in international law, particularly in American universities, through lectures and addresses, as well as through publications and all other means;

5. To organize the study of international law along truly scientific and practical lines in a way that meets the needs of modern life, and taking into account the problems of our hemisphere and American doctrines;

6. To contribute, within the limits of its competence and the means at its disposal, toward the maintenance of peace, or toward the observance of the laws of war and the mitigation of the evils thereof;

7. To increase the sentiment of fraternity among the Republics of the American Continent, so as to strengthen friendship and mutual confidence among the citizens of the countries of the New World.

Article III. *Membership*

The American Institute of International Law is composed of committees or delegates of the national societies of international law established in the different American Republics, which are affiliated therewith and of which it is the permanent representative.

It comprises:

1. Charter members;
2. Titular members;
3. Ex officio members;
4. Corresponding members.

The charter members are those who accepted this designation by signing, in 1912, the draft which has now become the present Constitution.

The titular members, chosen exclusively from among the publicists of the different Republics of the American Continent, are elected by the Institute, in conformity with the next article. No Republic may have more than five such members at one and the same time.

If the secretary general of the national society of international law in any one of the American Republics is not personally a member of the Institute, he becomes of right a member ex officio, that is to say, by virtue of and for the term of his office. Ex officio members have, as such, the same rights as titular members.

Jurists of non-American nationality, who, through their writings or their activity, shall have contributed to the progress of international law, may be elected corresponding members.

Corresponding members are invited to attend all the sessions of the Institute, with the same rights and privileges as American members. They have not, however, the right to vote either on administrative or scientific questions.

They are called upon to give their opinion on questions submitted to the consideration of the Institute, and they are active collaborators thereof.

They are exempt from the entrance fee and annual dues.

No one State can have more than three such members.

Article IV. *National Societies*

The national societies organized in each American Republic for the study and popularization of international law, whose members are jurists versed in international law, may affiliate with the American Institute. The members of these societies are entitled to attend the sessions of the Institute, but they may not take part in its deliberations nor may they vote.

The affiliated national societies propose duly qualified persons from among their nationals, for election as titular members by the Institute.

The members of the national societies, who are members of the Institute, constitute, in their country, a governing committee of the said society, which committee is the intellectual bond between the national society and the Institute.

The committee communicates, either directly, or through the secretary general of the national society, with the secretary general of the Institute, and sends him all the transactions and projects of the said society or informs him of the progress that has been made upon them.

The secretary general of the Institute transmits these transactions and projects in full, in part, or a synopsis thereof to the different national societies.

Article V. *Officers*

The officers of the Institute are an honorary president, a president, a secretary general, and a treasurer.

Before the close of each session there is an election of an honorary president and a president, who remain in office until the election of their successors at the following session.

The application of the foregoing second paragraph is provisionally suspended until the Institute shall have decided otherwise.

In the elections individual ballots are cast, and only the members present are permitted to vote. Nevertheless, absent members are allowed to send their votes in writing, in sealed envelopes. Candidates must receive a majority of the votes of the members present, as well as a majority of all the votes validly cast, in order to be elected.

Article VI. *Executive Council*

An *Executive Council* is the governing body of the Institute.

It meets at Washington, the seat of the Institute.

It is composed of the president, the secretary general, and the treasurer, who are members ex officio, and of two other members elected at the beginning of each session. They are eligible for re-election.

It has the right to increase its membership and itself elects additional members, if it deems it necessary.

Article VII. *Secretary General*

The secretary general is elected by the Institute for three sessions. He is eligible for re-election.

He has in his charge the drafting of the minutes of each meeting, all the publications of the Institute, its routine work, its correspondence, and the execution of its decisions, unless the Institute provides otherwise. He is keeper of its seal and

of its archives. At the beginning of each session he presents a summary of the work of the preceding session.

Article VIII. *Assistant Secretaries*

On the proposal of the secretary general, the Institute may appoint one or more assistant secretaries, to aid him in the performance of his duties or to represent him in his absence.

Article IX. *Treasurer*

The treasurer is elected for three sessions. He is eligible for re-election.

He has in his charge the financial affairs of the Institute, under the control of the Executive Council. He presents a detailed report at each session.

Two members are designated at the first meeting as auditors, and present, during the session, a report on the result of their examination of the treasurer's accounts.

Article X. *Reporters*

The Executive Council submits questions for examination and study to the affiliated national societies, or appoints reporters from among its members, or organizes committees for the preparatory study of questions that are to be submitted to the deliberations of the Institute.

In urgent cases, the secretary general himself prepares the reports.

Article XI. *Sessions*

There shall be at least one session of the Institute every two years; but the Executive Council may, during this interval, call an extra session of the Institute.

At each session the Institute designates the place and the time of the following session. It may leave this designation to the Executive Council,

Article XII. *Languages*

French, the language of the *Institut de droit international* and of the Peace Conferences, is likewise the language of the Institute.

Nevertheless the use of Spanish, Portuguese, and English, as national languages, is permitted as of right.

Every official document that is to be published is translated into the language or languages selected by the officers.

Article XIII. *Publication of Proceedings*

After each session, the Institute publishes an account of its proceedings.

Article XIV. *Dues and Funds*

The expenses of the Institute are covered:

1. By the dues of its members, as well as by an entrance fee.

The dues are, unless the by-laws provide to the contrary, an entrance fee of ten dollars and annual dues of five dollars. The dues are payable from and including the year of election. They entitle the member to all the publications of the Institute. An unjustifiable delay of more than three years in the payment of dues may be considered as equivalent to a resignation.

2. By foundations and other gifts.

It is proposed that a fund be gradually formed, the income from which shall be devoted to the expenses of the sessions, of the publications, of the secretariat, and of other routine matters.

Article XV. *Amendments.*

The present constitution may be revised or amended, in whole or in part, at a regular session, on the request of a majority of the members present and voting.

BY-LAWS OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

PART I

Members

ARTICLE I

The titular members of the Institute are elected by it from the list of names presented by the affiliated national society.

ARTICLE II

Where no affiliated national society exists or where the existing society neglects to present candidates, the Institute provides for nominations or vacancies as it sees fit.

ARTICLE III

Corresponding members are elected by the Institute on the proposal of the Executive Council, at the meeting devoted to the election of titular members.

PART II

Preliminary Work between Sessions

ARTICLE IV

By article X of the Constitution the Executive Council presents the questions for study, either by laying them before the national societies, or by designating two reporters, or one reporter and a committee of study for each question.

In the former case, the subject, with or without a questionnaire, is submitted to each national society.

If two reporters are appointed, each of them prepares a memorandum, after which one of them or a third reporter designated by the Executive Council prepares a report on the basis of and with the assistance of the memoranda presented.

If a reporter and a committee of study are designated, the reporter must get into communication with the members of the

committee before the 31st of December of the year of his appointment, and submit his ideas to them and learn their views.

Every member, who signifies his desire to that effect, has the right to be a member of such of the committees of study as he shall indicate to the secretary general.

Article V

The national societies and the reporters must transmit their studies or reports to the secretary general in ample time for their publication and distribution before the session at which they are to be discussed.

The secretary general does not provide for the printing or distribution of other reports or documents prepared by the reporters or by members of committees or of the Institute. Such works are published only in exceptional cases and by virtue of an express decision on the part of the Institute or the Executive Council.

PART III

Sessions

Article VI

There may be no more than one session each year. The interval between two sessions must not exceed two years.

At each session the Institute designates the place and time of the next session. This designation may be left to the Executive Council (Constitution, Article XI). In this case, the secretary general informs the national societies affiliated with the Institute, at least four months in advance, of the place and date determined upon.

Article VII

The program of the session is drawn up by the Executive Council, and the secretary general brings it to the attention of the national societies as soon as possible.

The program must be accompanied by the summary of the progress made on the preparatory work, as well as by all other information that may facilitate the labors of the members taking part in the session.

Article VIII

Members who desire to propose new questions for study are invited to lay them before the Executive Council at the beginning of the session. This invitation must be extended by the president at the opening of the sessions.

Article IX

The president, after consultation with the Executive Council and the reporters, determines the order in which the subjects should be treated; but the program is in all cases under the control of the Assembly itself.

PART IV

Meetings

Article X

The meetings are devoted to scientific work.

The titular members and the corresponding members take part in them. The former have the right to vote; the latter have the right merely to take part in the discussions.

The meetings are not public. The Executive Council may, however, permit the attendance of the local authorities and press, as well as of persons who request to be admitted.

Article XI

Unless otherwise resolved by a special decision of the Executive Council, the president delivers an address immediately after the opening of the first meeting.

The secretary general presents a summary of the work of the last session and makes known the names of the assistant

secretaries or editors whom he has appointed to aid him in drawing up the minutes of the session.

The assistant secretaries or editors hold office only during the session.

Article XII

The treasurer is then requested to present his accounts to the Institute, and two auditors are thereupon elected to examine the accounts of the treasurer. The auditors present their report in the course of the session (Constitution, Art. IX).

Article XIII

Each meeting is opened by the reading of the minutes of the preceding meeting.

Separate minutes are drawn up for each meeting, even when there are more than one on the same day; but the minutes of the morning meeting are read only at the opening of the next day's meeting.

The members present approve or revise the minutes. Revision can be requested only in the matter of wording, of errors, or of omissions. A decision cannot be changed in the minutes.

The minutes of the last meeting of a session are approved by the president.

Article XIV

If the Executive Council deems it advisable to consider a matter as urgent, it may propose the immediate discussion thereof, and, if the majority of the members present agree, the matter may be put to vote in the course of this session; otherwise the proposition is of right postponed until the following session.

Article XV

Committees may be appointed during a meeting for the examination of certain questions. These committees may, in turn, appoint sub-committees.

Article XVI

The propositions of the reporters and of the committees form the basis of the deliberations in the meetings.

The members of committees have the right to complete and develop their individual opinions.

Article XVII

The discussion is then opened. It takes place in the languages indicated in Article XII of the constitution.

At the request of the members, the discussion may be summed up in French.

Article XVIII

No one may speak without having been previously recognized by the president.

The latter notes the names of the members who request the floor and recognizes them in the order of their requests.

The reporters, however, when the question on which they have made a report is under discussion, are not subject to the rule of speaking in turn. The same is true of the president of the committee.

Article XIX

The reading of an address is forbidden, unless specially authorized by the president.

Article XX

If a speaker digresses too far from the subject under consideration, the president calls his attention to the fact and requests him to speak to the question.

Article XXI

All propositions and all amendments are submitted, in writing, to the president.

Article XXII

If a point of order is raised during a deliberation, the discussion of the main question is suspended until the assembly passes upon the point of order.

Article XXIII

The closing of the discussion may be proposed. The discussion may not, however, be declared closed, unless a two-thirds majority of the assembly so votes.

If no one demands the floor or if it has been resolved to close the discussion, the president declares the discussion closed. Thereafter no one may be given the floor, except, in special cases, the reporter or the president of the committee.

Article XXIV

Before proceeding to a vote, the president submits to the assembly the order in which the questions will be voted upon.

If there are objections to the order, the assembly passes upon them at once.

Article XXV

Amendments to amendments are put to vote before amendments, and the latter before the main question. Proposals purely and simply to reject the question are not considered amendments.

Where there are more than two alternate main propositions, they are all put to vote, one after the other, and every member may vote for one of them. When a vote has thus been taken on all the propositions, if none of them has obtained a majority, the members decide, by another ballot, which of the two propositions receiving the least number of votes must be eliminated. The remaining propositions are then voted upon in the same manner until only one is left, upon which a definitive vote may be taken.

Article XXVI

The adoption of an amendment to an amendment does not bind a member to vote for the amendment itself; neither does the adoption of an amendment obligate a member to vote in favor of the main proposition.

Article XXVII

When a proposition is capable of being divided, any member may request a vote by division.

Article XXVIII

When the proposition under consideration is drawn up in several articles, the proposition as a whole is first subjected to general discussion.

After such discussion and the vote on its articles, the proposition as a whole is put to vote. Such vote may be postponed until a subsequent meeting.

Article XXIX

The voting is done by raising the hand.

No one is bound to take part in a vote. If some of the members present abstain, the question is decided by the majority of those voting.

In case of a tie, the proposition is considered defeated.

Article XXX

The vote may be taken by roll-call, if five members so request. There is always occasion for a roll-call on a scientific proposition as a whole.

The minutes mention the names of the members voting for or against and the names of those who abstain.

Article XXXI

The Institute may decide that a second deliberation should take place, either in the course of the session, or during the following session, or that its decisions be referred to a drafting committee to be designated by itself or by the Executive Council.

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Elihu Root, *Honorary President*
James Brown Scott, *President*
Alejandro Alvarez, *Secretary General*
Luis Anderson, *Treasurer*

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Elihu Root
James Brown Scott
Alejandro Alvarez
Luis Anderson
Antonio Sanchez de Bustamante
Joaquin D. Casasus[1]

Permanent Committee for the Study of Questions Relating to Neutrality

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Bolivia: Alberto Gutierrez
Brazil: Ruy Barbosa
Chile: Alejandro Alvarez
Colombia: Antonio José Uribe
Costa Rica: Luis Anderson
Cuba: Antonio Sanchez de Bustamante
Dominican Republic: Andrés J. Montolio
Ecuador: Rafael Arizaga
Guatemala: Antonio Batres Jauregui
Haiti: J. N. Léger
Honduras: Alberto Membreño
Mexico: Joaquin D. Casasus (Deceased)

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[1]Died February 25, 1916.

Nicaragua: Salvador Castrillo
Panama: Federico Boyd
Paraguay: Manuel Gondra
Peru: Ramon Ribeyro
Salvador: Rafael S. Lopez (deceased)
United States of America: James Brown Scott
Uruguay: Carlos M. de Pena
Venezuela: José Gil Fortoul

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CARLOS SALAZAR

Haiti

Louis Borno
Edmond Héraux
Pierre Hudicourt
Jacques N. Léger
Solon Ménos

Honduras

Fausto Davila
Alberto Membreño
Alberto Uclés
Ricardo de J. Urrutia
Mariano Vásquez

Mexico

Francisco L. de la Barra
Manuel Calero
Joaquin D. Casasus[1]
Victor Manuel Castillo
Pedro Lascurain

Nicaragua

Modesto Barrios
Alejandro Cesar
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Maximo H. Zepeda

Panama

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Harmodio Arias
Eusebio A. Morales
Belisario Porras
Ramon M. Valdes

Paraguay

Eusebio Ayala
Cecilio Baez
Manuel Gondra
Antolin Irala
Fulgencio R. Moreno

[1]Died February 25, 1916.

Peru

ISAAC ALZAMORA
VICTOR M. MAURTUA
SOLON POLO
RAMON RIBEYRO
MANUEL V. VILLARÁN

Salvador

SALVADOR GALLEGOS
ALONSO REYES GUERRA
VICTOR JEREZ
MANUEL I. MORALES
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JUAN ZORILLA DE SAN MARTIN

Venezuela

SIMON BARCELÓ
ARMINIO BORJAS
JESUS ROJAS FERNANDEZ
JOSÉ GIL FORTOUL
F. ARROYO PAREJO